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1 BEFORE THE ARIZONA CORPORATION COMMISSION

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3 IN THE MATTER OF THE APPLICATION OF)
4 ARIZONA UTILITY SUPPLY & SERVICES,)
5 L.L.C. FOR THE TRANSFER OF A PORTION) DOCKET NOS.
6 OF ITS CERTIFICATE OF CONVENIENCE) SW-04002A-02-0837
7 AND NECESSITY TO JOHNSON UTILITIES,) WS-02987A-02-0837
8 L.L.C.) SW-04002A-04-0465
9) WS-02987A-04-0465

10 IN THE MATTER OF THE APPLICATION OF)
11 ARIZONA UTILITY SUPPLY & SERVICES,)
12 L.L.C. TO TRANSFER ITS ASSETS AND)
13 CERTIFICATE OF CONVENIENCE AND)
14 NECESSITY TO JOHNSON UTILITIES,)
15 L.L.C.)

16

At: Phoenix, Arizona

17

Date: December 9, 2004

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of said
4 Commission, 1200 West Washington Street, Phoenix, Arizona,
5 commencing at 1:00 p.m. on the 9th of December, 2004.

6

7

8 BEFORE: DWIGHT D. NODES, Assistant Chief Administrative
9 Law Judge

10

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Certified Court Reporter

Certificate No. 50154

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1 ACALJ NODES: Let's go on the record.

2 Good afternoon, welcome to the Arizona
3 Corporation Commission. We're here today for a resumption
4 of the hearing in Docket No. SW-04002A-02-0837, et al.,
5 and Docket SW-04002A-04-0465, et al., being in the matter
6 of the AUSS, or Arizona Utility Supply & Services, L.L.C.,
7 for a transfer of a portion of a certificate of
8 convenience and necessity to Johnson Utilities, and then
9 the subsequent docket to transfer all of the CC&N to
10 Johnson.

11 My name is Dwight Nodes. I'm the
12 administrative law judge assigned to this proceeding. And
13 before we get started, I'll take appearances on behalf of
14 the parties. First on behalf of Johnson Utilities
15 Company.

16 MR. SHAPIRO: Thank you, Your Honor. Jay
17 Shapiro on behalf of Johnson Utilities Company. With me
18 today are the company's principals, Mr. George Johnson and
19 Mr. Brian Tompsett.

20 ACALJ NODES: Is there anyone here
21 representing AUSS?

22 (No response.)

23 ACALJ NODES: On behalf of Centex.

24 MR. WILEY: Todd Wiley, Your Honor, from
25 Gallagher & Kennedy for Centex.

1 ACALJ NODES: On behalf of Staff.

2 MR. GELLMAN: Good afternoon, Your Honor.
3 Jason Gellman on behalf of Commission Staff.

4 ACALJ NODES: RS Investments' counsel
5 previously withdrew. That motion is granted.

6 Is there anyone here on behalf of the
7 bankruptcy trustee?

8 (No response.)

9 ACALJ NODES: We had a motion to intervene
10 filed, I believe yesterday, by KB Homes. Is there anyone
11 here representing KB Homes?

12 MR. LUTZ: Good afternoon, Your Honor. Stan
13 Lutz from Bryan Cave on behalf of KB Homes, motion to
14 intervene.

15 ACALJ NODES: You're Mr. Lutz?

16 MR. LUTZ: Yes.

17 ACALJ NODES: Do you want to take a seat at
18 the counsel table?

19 MR. LUTZ: I didn't believe the motion had
20 been granted. If you'd like me to sit up here, we'd be
21 more than happy to do so.

22 ACALJ NODES: Why don't you sit over here at
23 this microphone, make sure your green light is on, and we
24 can address your motion to intervene at this point.

25 Mr. Lutz, you're representing KB Homes, and

1 you filed a motion to intervene yesterday; is that right?

2 MR. LUTZ: Yes, Your Honor.

3 ACALJ NODES: Is there any objection to
4 intervention of KB Homes in this proceeding?

5 (No response.)

6 ACALJ NODES: Let the record reflect no
7 response.

8 Then I will grant KB Homes' intervention in
9 this proceeding, and you're welcome to cross-examine
10 witnesses or take whatever role, argue motions, so forth,
11 that you believe you need to.

12 MR. LUTZ: Thank you, Your Honor.

13 ACALJ NODES: Well, we're back here after
14 quite a long process. Mr. Shapiro, do you want to give an
15 opening statement, or how do you want to proceed?

16 MR. SHAPIRO: I don't think an opening
17 statement is necessary, Your Honor, unless there is
18 something in particular you'd like covered. We've had a
19 number of procedural conferences to keep you informed of
20 the status. The company is ready to proceed, and return
21 Mr. Tompsett to the stand.

22 ACALJ NODES: Okay. Do any other parties wish
23 to make any opening statements or raise any other
24 procedural issues before we get started?

25 MR. GELLMAN: Your Honor, Jason Gellman for

1 Staff. Just to let Your Honor know, there are
2 representatives here today in the hearing room from the
3 Arizona Department of Environmental Quality, and I also
4 believe representatives from First National Management as
5 well.

6 ACALJ NODES: Okay. Are you planning on
7 presenting any DEQ witnesses, Mr. Gellman, or are they
8 just here in case we wish to have them come forward?

9 MR. GELLMAN: Your Honor, I am not intending
10 to call any witness from ADEQ to the stand.

11 ACALJ NODES: Are there any members of the
12 public that wish to come forward and be heard in this
13 matter?

14 (No response.)

15 ACALJ NODES: All right. Well, Mr. Shapiro,
16 you want to call your witness, then.

17 MR. SHAPIRO: We will recall Mr. Brian
18 Tompsett to the stand.

19 ACALJ NODES: I believe you were previously
20 sworn in this proceeding, but let's have the court
21 reporter swear you in again. It was some time ago when
22 you were presented briefly.

23

24

25

1 BRIAN P. TOMPSETT,
2 called as a witness, having been first duly sworn by the
3 Certified Court Reporter to speak the truth and nothing
4 but the truth, was examined and testified as follows:
5

6 DIRECT EXAMINATION

7 BY MR. SHAPIRO:

8 Q. Good afternoon, sir. Why don't you go ahead
9 and state your full name for the record.

10 A. Brian P. Tompsett. I'm the executive
11 vice-president for Johnson Utilities.

12 ACALJ NODES: Mr. Tompsett, is your green
13 light on your microphone?

14 THE WITNESS: Yes, it is, Your Honor.

15 ACALJ NODES: If you would speak directly into
16 the microphone. Thank you.

17 Q. BY MR. SHAPIRO: You are the same Brian
18 Tompsett that testified in this proceeding back in July,
19 when the proceeding first commenced?

20 A. I am.

21 MR. SHAPIRO: If I may approach, Your Honor.

22 ACALJ NODES: Yes.

23 MR. SHAPIRO: Your Honor, we had previously
24 marked Exhibits J-1 and J-2. With your permission, and
25 given the time and certain changed circumstances, we are

1 going to introduce some revised exhibits. J-2, which I'll
2 get to in a moment, was filed the other day jointly by
3 Staff and Johnson Utilities. J-1 is a revised map.

4 Q. BY MR. SHAPIRO: Mr. Tompsett, I've handed you
5 what's been marked as Exhibit J-1, and there's also a
6 blown up copy up here on the board. Was this prepared by
7 you?

8 A. It was prepared by engineering staff, yes.

9 Q. If you can, I direct your attention -- this
10 map over here was marked as Exhibit J-1 in the prior
11 hearing. This was also prepared by that you; correct?

12 A. That's correct.

13 Q. And the purpose of the map was to show the
14 AUSS service area and the area in which Johnson is seeking
15 to extend its CC&N?

16 A. That's correct.

17 Q. Can you identify for Judge Nodes the changes
18 you've made from the prior Exhibit J-1 in creating the
19 current Exhibit J-1?

20 A. Yes. On the current J-1 that was just
21 presented today, we have eliminated some of the
22 information that wasn't necessary to this hearing. The
23 gold outline of the parcel is the area that is going -- is
24 proposed to be deleted. That shows the entirety of AUSS'
25 existing CC&N.

1 The two hatched sections and a portion of
2 Section 20, 21, and 22 are the areas that Johnson
3 Utilities propose our CC&N be expanded into. The Sections
4 19 and that portion of 30 were in the existing AUSS CC&N
5 that's proposed to be deleted, and we are not asking that
6 Johnson Utilities' CC&N be extended into those two
7 sections.

8 Q. Let me stop you there, Mr. Tompsett. So, if
9 we go back to the old J-1, Chandler Heights Road bisects
10 the portion you described as Section 19, and a portion of
11 Section 30?

12 A. That is correct.

13 Q. That's currently in AUSS' CC&N?

14 A. That's correct.

15 Q. Is AUSS providing any service to customers in
16 that area?

17 A. No. The customers in those two sections are
18 being served water by a separate provider, but all of the
19 sewer services are on septic tank systems.

20 Q. In the revised J-1 that you have in front of
21 you, you have not shown that as an area that Johnson
22 Utilities seeks to extend its CC&N into?

23 A. That is correct.

24 Q. Why is Johnson not asking for that portion of
25 AUSS' certificated service area to be included in

1 Johnson's service area?

2 A. Through discussions with the Town of Queen
3 Creek and some of the area landowners, we determined that
4 the Town of Queen Creek is interested in serving this
5 area, it is in their master planned sewer service area,
6 and it's their desire to serve sewer in those two sections
7 at some point in the future.

8 Q. Based on that it was agreeable to Johnson
9 Utilities not to extend its CC&N in that area?

10 A. That's correct.

11 Q. The failure of Johnson to include that area in
12 its CC&N will not leave any customers without adequate
13 sewer service at this time?

14 A. That's correct. The customers who are on
15 existing separate systems will maintain those systems.

16 Q. The remaining areas that are subject to
17 Johnson Utilities' request that its CC&N be extended,
18 those are the areas that either currently have customers
19 or that are planned for residential development to be
20 served by sewer?

21 A. That's correct.

22 Q. So all of the hatched area, I believe, as you
23 described it, is an area that will need wastewater utility
24 service, doesn't have septic?

25 A. That's correct. Some of the areas within

1 there do have existing septic systems, but we don't intend
2 to do anything to prevent them from continuing that
3 service if they wish.

4 Q. All of the hatched area is the area that AUSS
5 is currently serving under its CC&N?

6 A. Everything within the gold boundary, that's
7 correct.

8 Q. I'm sorry, I meant actually providing service
9 to is the hatched area?

10 A. That's correct.

11 Q. Johnson Utilities' request to extend its CC&N,
12 we could say, is contiguous with the area that actually
13 has customers receiving service from AUSS or was planned
14 to receive service from AUSS?

15 A. That's correct, planned in the near future.

16 Q. This is also the area that Johnson Utilities
17 provides a bulk service under separate agreements?

18 A. Yes, three separate agreements.

19 Q. The first of those agreements is an agreement
20 with the Castlegate developers, of which Mr. Lutz' client,
21 KB Homes, is one, that's Section 22?

22 A. Yes, sir, collectively known as the Castlegate
23 development.

24 Q. Johnson Utilities is currently providing bulk
25 wastewater treatment under a bulk agreement?

1 A. Yes.

2 Q. That agreement is scheduled to be signed
3 immediately to be extended for a longer period of time?

4 A. Today, yes.

5 Q. Johnson Utilities is presently being paid for
6 that bulk service by the developers?

7 A. Castlegate development is up to date on their
8 invoices.

9 Q. And Centex is also developing two subdivisions
10 in the area certificated to AUSS; is that correct?

11 A. That's correct.

12 Q. That's Las Praderas and Meadow Vista?

13 A. That's correct.

14 Q. Johnson Utilities is also providing bulk
15 service to those two subdivisions?

16 A. The only homes occupied today are
17 Las Praderas.

18 Q. That's under a separate bulk agreement entered
19 into in August between Centex and Johnson Utilities?

20 A. Yes.

21 Q. Johnson Utilities agreed to extend that
22 agreement for an additional period of time while the
23 proceedings at the Commission continue; correct?

24 A. That's correct.

25 Q. Lastly, Johnson Utilities is also taking

1 effluent treated at AUSS' Links plant and providing
2 further treatment and disposal of that effluent?

3 A. That's correct.

4 Q. That's under a separate agreement between
5 Johnson Utilities and First National Management?

6 A. Yes.

7 Q. Under that agreement First National is paying
8 for the bulk disposal and treatment of the sewer service
9 for bulk service, paying out of their customers?

10 A. They are.

11 Q. You've also agreed to enter into an extension
12 of that agreement?

13 A. That's correct.

14 Q. Centex is paying for the service it provided
15 under the Centex agreement?

16 A. Centex is current on their invoices, yes.

17 Q. Prior to the time that you entered into the
18 separate agreements with the developers of the Castlegate
19 subdivision, Centex, and First National Management, was
20 Johnson Utilities being paid for the bulk services it was
21 providing?

22 A. We were not being paid.

23 Q. That was because AUSS had not made any
24 payments?

25 A. That's correct.

1 MR. SHAPIRO: Your Honor, with that, I will
2 move to replace the existing Exhibit J-1 that was in the
3 record with the new Exhibit J-1.

4 ACALJ NODES: Why don't we, since it was
5 previously admitted, why don't we mark this as a separate,
6 different exhibit number rather than replacing it.

7 MR. SHAPIRO: Okay.

8 ACALJ NODES: You said you already have marked
9 it J-2?

10 MR. SHAPIRO: This would be J-3, Your Honor.

11 ACALJ NODES: The new map that you've just
12 been discussing would be J-3; is that right?

13 MR. SHAPIRO: So the record is clear, the
14 Exhibit J-1 no longer reflects the area that Johnson
15 Utilities is requesting that a CC&N be extended into.

16 ACALJ NODES: Mr. Shapiro, is J-1 the map that
17 was laid on the bench before the hearing began this
18 afternoon?

19 MR. GELLMAN: Your Honor, that was originally
20 intended to be a Staff exhibit. However, we realized, in
21 talking to Mr. Shapiro, that he had already marked and
22 entered that as Exhibit J-1, so...

23 ACALJ NODES: So it is J-1?

24 MR. GELLMAN: Right.

25 ACALJ NODES: Let me ask, before you move on,

1 Mr. Shapiro, Mr. Tompsett, do you have before you what was
2 previously entered into the record as J-1, which was your
3 prior map?

4 THE WITNESS: Your Honor, I do not, but I was
5 referencing the oversized one on the wall.

6

7

EXAMINATION

8 BY ACALJ NODES:

9 Q. If you can refer to that, and I'm looking at
10 the one on the bench. The area that is outlined in orange
11 on that map --

12 A. Yes.

13 Q. -- was the area that Johnson was previously
14 seeking an extension for CC&N?

15 A. Your Honor, the map indicated as J-1, the area
16 outlined in orange was actually prepared for a 208
17 amendment that showed the entire service area subject to
18 flows to the Pecan wastewater treatment plant. It
19 included portions of Johnson's existing CC&N, portions of
20 AUSS' existing CC&N, and then the northernmost piece is
21 Section 17, and that was a proposed CC&N expansion that
22 was before the ACC that has subsequently been withdrawn.

23 Q. Okay. So the area north of Ocotillo Road has
24 subsequently been withdrawn; is that correct?

25 A. That's my understanding, yes.

1 Q. In addition, an area that is below the line of
2 Chandler Heights Road has been withdrawn?

3 A. Yes, that is correct.

4 Q. That extended down, I guess, Combs Road?

5 A. Yes. The portions of Section 19 and
6 Section 30 are within AUSS' existing CC&N, and we did not
7 request Johnson's CC&N be extended into those two
8 sections.

9 Q. Okay. And for Pecan Ranch, who is currently
10 serving wastewater, if anyone, to that area?

11 A. The Pecan Ranch project is currently in
12 Johnson's existing CC&N, and we are serving customers in
13 that area, sewer only.

14 Q. Okay. And then the area that is, that looks
15 like something called Circle Cross, a development, is that
16 currently in Johnson's CC&N area?

17 A. Those -- yes, Your Honor, those two sections
18 are in Johnson's existing CC&N area, and we are serving
19 sewer to customers within those two sections.

20 Q. The area north of Ocotillo Road that has a
21 number of, looks like developments plotted, are there any
22 customers -- let me change that. Are there any homes that
23 have been built in the area that's identified previously
24 on J-1 as being north of Ocotillo Road?

25 A. Yes, Your Honor, and maybe I can explain a

1 little bit about how there came to be existing homes in
2 that area.

3 The project labeled Vineyard Estates was being
4 constructed by a homebuilder by the name of Elite Homes.
5 The operator of AUSS, Mr. Maurice Lee, had entered into an
6 agreement with them to serve wastewater to that project,
7 constructed an existing sewer line and lift station to
8 serve the project while his application was pending before
9 this Commission.

10 Again, that application to expand AUSS' CC&N
11 into Section 17 has subsequently been withdrawn.

12 Johnson does intend to make an application in
13 the near future to serve homes within that area.

14 Q. When you say that area, are you just referring
15 to Vineyard Estates, or the entirety of what was
16 previously enclosed within the orange line between
17 Ocotillo and Pima roads?

18 A. Your Honor, it includes a majority of that
19 area. We're looking at specific names on the map that
20 you're referring to, it would include the project by
21 Continental Homes, Pulte homes, Del Pueblo Homes, Vineyard
22 Estates, and the future Maracay development.

23 Q. For any homes that are currently existing
24 within that area, the area north of Ocotillo Road, how are
25 homes being served with wastewater and service at this

1 time?

2 A. Johnson Utilities has entered into a bulk
3 billing agreement, Your Honor, with Vineyard Estates to
4 serve those existing homes until such time as the
5 Commission can hear a CC&N application for that area.

6 Q. But Vineyard Estates is the only area -- only
7 development within that area where homes are currently
8 existing and receiving wastewater service?

9 A. Yes, Your Honor, that's correct.

10 ACALJ NODES: Mr. Shapiro.

11 MR. SHAPIRO: Thank you, Your Honor.

12

13 DIRECT EXAMINATION CONTINUED

14 BY MR. SHAPIRO:

15 Q. That agreement with Vineyard Estates is
16 actually with the homeowners association in that area that
17 would otherwise have a right to provide sewer service?

18 A. That is correct.

19 Q. And the area that was originally requested by
20 AUSS and Johnson for an extension of service by Johnson
21 Utilities was all of AUSS' area; correct?

22 A. The original application was for the entire
23 area, that's correct.

24 Q. The original application was actually made by
25 AUSS; correct?

1 A. Yes. There were two applications that were
2 made by AUSS. One was a deletion and extension of the
3 Section 22, which is referred to typically as the
4 Castlegate development, and then a subsequent application
5 was made to delete the bounds of AUSS' CC&N.

6 Q. And the purpose of Johnson Utilities
7 amendment, so to speak, here today is to shorten that
8 area, is because as you spoke earlier, the desire of Queen
9 Creek to have those areas left out?

10 A. That is correct.

11 Q. To your knowledge, was that something that was
12 contemplated in the recent settlement agreement approved
13 in the AUSS bankruptcy proceeding?

14 A. Yes, that is correct. Queen Creek was aware
15 of the settlement agreement, and in fact we were not
16 asking to serve areas that were in their master plan area.

17 Q. And that was agreed to by the bankruptcy
18 trustee, to your knowledge?

19 A. To my knowledge, yes.

20 MR. SHAPIRO: Thank you, Mr. Pompsett.

21 ACALJ NODES: Mr. Pompsett, does that
22 development have a name, subdivision name that you say
23 Queen Creek wants to serve?

24 THE WITNESS: Your Honor, the majority of that
25 area is undeveloped. The homes that are out there are

1 typically large lots, three, four, five acre lots,
2 individual homes, they're all on individual septic
3 systems. So there are future planning efforts that are
4 going on in those areas to develop some of them, but I
5 think they're a couple years in the future.

6 ACALJ NODES: So even though all these lots
7 appear to be platted, it's not a single, uniform
8 development?

9 THE WITNESS: Not that I'm aware of.

10 ACALJ NODES: Okay. Sorry. Go ahead.

11 MR. SHAPIRO: That's okay, Your Honor. Thank
12 you.

13 Q. BY MR. SHAPIRO: Mr. Tompsett, turning now to
14 Exhibit J-2, which in the prior hearing was a list of
15 conditions that were requested for approval by the
16 Commission by Johnson Utilities, do you recall that?

17 A. Yes, I do.

18 Q. And the purpose of those conditions were that
19 Johnson Utilities felt there were certain things that
20 needed to be accomplished before it could extend its CC&N
21 and extend permanent wastewater service in the area
22 currently served by AUSS?

23 A. That's correct.

24 Q. And there were some concerns expressed by
25 other parties regarding the proposed conditions set forth

1 in J-2?

2 A. Yes.

3 Q. And under your direction and supervision, the
4 company has worked with Corporation Commission Staff to
5 propose a revised set of conditions?

6 A. That's correct.

7 MR. SHAPIRO: Your Honor, if I may approach.

8 BY MR. SHAPIRO: I hand you what's been marked
9 as Exhibit J-4.

10 Your Honor, for the record, this was the
11 document that was filed last week jointly by Staff of the
12 Commission, as revised. Exhibit J-2, in light of your
13 earlier direction, I went ahead and marked it as J-4, then
14 we won't replace J-2.

15 ACALJ NODES: That's fine, and that was
16 docketed on December 2nd; is that right?

17 MR. SHAPIRO: That sounds right, Your Honor,
18 yes.

19 Q. BY MR. SHAPIRO: Is what I've handed you and
20 marked as Exhibit J-4, Mr. Tompsett, in fact the revised
21 list of conditions?

22 A. Yes, I believe so.

23 Q. Can you just generally describe the purpose of
24 the request by Staff and Johnson Utilities that the
25 Commission not approve an extension of Johnson's CC&N

1 until such time that certain conditions are met?

2 A. Yes, I can explain a little, in general terms
3 here.

4 Through this process that we've been working
5 with Staff and the members of AUSS originally, it became
6 apparent to us early on that the ADEQ approvals, the
7 easement requirements, the ownership of some of the
8 parcels that were purportedly in AUSS' name, were, in
9 fact, not the case. Just on a superficial review of the
10 easements and ownership of the area of Johnson, we
11 determined that there were a number of subdivisions that
12 had not received the approvals of construction from ADEQ.

13 The wastewater treatment plant to some of the
14 facilities appeared, in our minds, to be in violation of
15 ADEQ's rules. The ownership of a number of the facilities
16 is still uncertain at this time, and some of the
17 facilities that we would need to operate this area were
18 not within utility easements or public right-of-ways. So
19 we were very concerned that a number of the facilities
20 that we would need to operate were not properly permitted,
21 number one, or ownership document correctly.

22 Q. Is it fair to summarize, Mr. Tompsett, and say
23 that the situation out in AUSS is a bit of a mess, and
24 this will allow Johnson Utilities some time to understand
25 what is out there and ensure that when it does step in and

1 extend permanent service, it can do so in an adequate and
2 reliable fashion?

3 A. That is our intention, yes. Because up until
4 recently, it was not in our best interests to spend
5 additional funds and manpower trying to figure out really
6 what we had.

7 Q. And was that because of the pending bankruptcy
8 proceeding?

9 A. That's correct.

10 Q. Now that the bankruptcy court has approved the
11 settlement, Johnson Utilities is in a better position to
12 step forward and start that process?

13 A. Yes, we feel more comfortable now.

14 Q. Part of that process will be identifying
15 facilities that were constructed by developers or paid for
16 to be constructed by developers that Johnson Utilities
17 will need to serve customers in the AUSS area?

18 A. Yes, that's correct.

19 Q. In fact, isn't it true, Mr. Tompsett, for
20 example, that the Castlegate developer has constructed
21 certain facilities for AUSS?

22 A. Yes, that is correct.

23 Q. But, however, you were unable to locate either
24 a bill of sale or other documents identifying what those
25 facilities were or AUSS' acceptance of those facilities?

1 A. We have not been able to determine that at
2 this time, no.

3 Q. In fact, KB Homes wasn't able to locate an
4 acceptance by AUSS for those facilities; correct?

5 A. That's my understanding.

6 Q. That's the kind of thing that you would intend
7 to do pursuant to these conditions before the Commission
8 actually extended the CC&N?

9 A. That's exactly right.

10 Q. Similarly, you want to identify existing
11 easements and have those easements conveyed by the trustee
12 and then obtain additional easements as necessary to
13 provide service?

14 A. Yes.

15 Q. Same thing with respect to ADEQ or other
16 governmental approvals that are necessary?

17 A. Yes. We would like to have a fully approved
18 system when we take it over.

19 Q. And in the interim period, while Johnson
20 undertakes steps to fulfill those conditions, is it
21 Johnson Utilities' intent to continue to provide the bulk
22 services under the three agreements we discussed earlier?

23 A. Yes, we will.

24 MR. SHAPIRO: Your Honor, I would note for the
25 record, as explained in the filing that you indicated

1 earlier was made on December 2nd, Staff and Johnson
2 Utilities are jointly requesting that the Commission, in
3 the order we're requesting here today, approve these
4 conditions pursuant to A.R.S. 40-282.D, which both Johnson
5 and Staff believe gives the Commission authority to issue
6 a order preliminary to the issuance of a CC&N or extended
7 CC&N in this case.

8 ACALJ NODES: I understand that, Mr. Shapiro.
9 Are you familiar with prior dockets where the Commission
10 has issued an order preliminary to the issuance of the
11 certificate?

12 MR. SHAPIRO: Personally, Your Honor, no, I am
13 not. Subsequent to the prior hearing, after there were
14 certain concerns expressed with regard to the conditions
15 in consultation with Staff and Staff counsel, we came upon
16 the statute and felt that this was a means by which the
17 two parties can collectively recommend this process.

18 ACALJ NODES: This is somewhat of a variance
19 on the Commission's normal procedure, perhaps, where a
20 certificate is sometimes granted subject to performance of
21 certain conditions; is that fair?

22 MR. SHAPIRO: I think that's fair, Your Honor.
23 The concern here is Johnson Utilities is perfectly willing
24 to ultimately take over service in this area, but as has
25 been expressed previously, the company does not want to

1 have the obligation to serve that's attendant with the
2 CC&N until it knows what it's getting, where the
3 facilities are it needs to serve, where the easements and
4 approvals are.

5 Unfortunately, the AUSS situation has not --
6 does not lend itself to easily understanding what
7 approvals are in place, what facilities are in place,
8 et cetera. Given those unique circumstances, this was an
9 idea that Staff and the company have collectively come up
10 with and collectively proposed to the Commission.

11 ACALJ NODES: Okay. And obviously, these are
12 somewhat mixed issues of law and fact, perhaps, but
13 probably more on the side of law, which is why I'm
14 directing them to you rather than Mr. Tompsett.

15 MR. SHAPIRO: I understood that. That's why I
16 spoke up, Your Honor.

17 ACALJ NODES: Under the scenario that Johnson
18 and Staff are proposing here with this order preliminary,
19 does the bankruptcy court subsequently need to approve a
20 transaction that would later come to fruition, such as
21 ownership interests being identified?

22 MR. SHAPIRO: No, Judge Nodes. That's
23 actually a very good question. Because the parties to the
24 bankruptcy proceeding or to the settlement were aware of
25 the concerns that led to this proposal, I believe, and

1 Mr. Wiley is here, and he is as much as anybody the author
2 of the settlement.

3 I believe we contemplated this situation, and
4 we will need the trustee to execute a number of conveyance
5 documents, bills of sale, quitclaim deeds for easements,
6 et cetera. But I do not believe that we have to go back
7 to Judge Marlar and obtain approval.

8 I believe the trustee is holding the utility
9 assets, which are defined in the settlement agreement as
10 those assets needed by Johnson Utilities to extend
11 permanent service to the area currently certificated to
12 AUSS. The trustee is holding those assets until such time
13 as Johnson Utilities and Staff, with the help of the
14 developers, identify what we need, ensure that it's out
15 there, properly permitted, properly located, and then we
16 will ask the trustee on behalf of the AUSS estate to
17 execute necessary conveyance documents.

18 But I don't believe that anybody contemplates
19 going back to Judge Marlar for further approvals. I think
20 the settlement agreement he approved, and I believe
21 Mr. Gellman is going to mark something evidencing Judge
22 Marlar's approval contemplates that, and allows that
23 process to take place with the support of the trustee.

24 ACALJ NODES: Is that your understanding,
25 Mr. Wiley?

1 MR. WILEY: Yes, Judge, I'd echo that.

2 Actually, the intent of the settlement agreement with the
3 bankruptcy was to have a permanent transfer of all the
4 utility assets and the CC&N. The way that the settlement
5 agreement is written is it gives the developers the option
6 of taking those assets and CC&N, taking the assets, and
7 holding them until all the conditions could be met for
8 purposes of a permanent CC&N transfer in this proceeding,
9 at which point they will all be then conveyed to Johnson.
10 And there's an option in there where the trustee can
11 continue to hold them or the developers can designate an
12 entity to take those assets and hold them.

13 But the bankruptcy court approved the transfer
14 on a permanent basis subject to compliance with payments
15 and some other things that are part of the bankruptcy
16 settlement. Once those things occur, all of the assets
17 were out of the bankruptcy court to the developer, slash,
18 Johnson permanently, and we don't need to go back to the
19 bankruptcy court for anything else with respect to
20 approval of this proceeding. And this proceeding is
21 actually referenced in the settlement agreement, because
22 it was all part of, you know, of dealing with, it was all
23 part of the same deal.

24 ACALJ NODES: Is there a time frame set by the
25 bankruptcy court under which all these transactions need

1 to be completed?

2 MR. WILEY: There's not a specific time frame.
3 Under the settlement agreement, the developers have to
4 make a payment of \$50,000 within 10 days. Once that
5 payment is made, the assets are then going to be
6 transferred out of the estate to whoever the developers
7 designate.

8 We also have obligations. When I say we, I
9 mean the developers. The developers also have obligations
10 to submit closure plans on the Meadow Vista and sewer
11 treatment plants as part of that settlement agreement. I
12 think it's within 14 days from the entry of the order we
13 have to get our closure plans to the DEQ. Both the
14 developers involved have already talked to DEQ, had their
15 engineers talk to DEQ and the closure plan side of it.
16 These are really the time frames set for in the settlement
17 agreement, in part because we anticipated there were going
18 to be some timing issues with respect to the permanent
19 conditions that Johnson wanted as part of the CC&N
20 transfer. So we wrote that into the bankruptcy agreement
21 and the court approved all that and was aware of that when
22 we submitted the documents to Judge Marlar.

23 ACALJ NODES: Mr. Gellman, did you have
24 anything to add on this particular topic?

25 MR. GELLMAN: Your Honor, we agree with what's

1 been said by both Mr. Shapiro and Mr. Wiley.

2 ACALJ NODES: I'm not sure, I'll direct this
3 to Mr. Shapiro. Is there a time frame in which you
4 believe that all of these conditions will be satisfied
5 within?

6 MR. SHAPIRO: Your Honor, the difficulty is
7 that as Mr. Tompsett indicated, up until the bankruptcy
8 court approved the settlement, Johnson Utilities did not
9 feel it was in a position to begin investigating what's
10 out there, whether adequate facilities, adequate
11 easements, and adequate permits exist. So now the
12 bankruptcy court has approved that, and subject to the
13 hope that the Commission will approve these conditions,
14 Johnson Utilities intends to begin that process.

15 The agreements that Mr. Tompsett referenced
16 earlier are being extended. The agreement with First
17 National Management has a 90-day extension with an
18 automatic additional 90-day extension if the Commission
19 issues an order approving the joint request by Staff and
20 the company. The agreement with Castlegate has a similar
21 provision. The agreement with Centex has a 90-day
22 extension with the parties having a right to extend for
23 another 90 days.

24 So I believe the parties are contemplating a
25 90- to 180-day period to accomplish these goals, with the

1 hope that we'll be able to accomplish it in that period of
2 time. Again, in the interim, an issue that has obviously
3 been important, as you've raised in the procedural
4 conference, is while those agreements are contemplated,
5 the bulk service by Johnson will continue during that
6 time, and graciously paid for by the developers.

7 ACALJ NODES: If I understand it, then, you
8 believe that all of the conditions, including
9 identification and transfer of assets, as well as the
10 compliance with the DEQ concerns should be able to be
11 accomplished within the 90- to 180-day period, and that
12 would then complete all of the conditions and that there
13 would be then a final subsequent order granting a
14 permanent certificate to Johnson for the areas requested?

15 MR. SHAPIRO: Let me answer that in two parts.
16 The contemplation is that once Johnson Utilities feels
17 that the conditions are satisfied, then we'll make a
18 submittal to Staff who will then determine whether they
19 agree to the conditions that have been fulfilled, and then
20 either you would be asked to prepare an additional order
21 or perhaps Staff would; I'm not sure that that's been
22 determined yet. That's the second part.

23 I think at this point we would like to be
24 optimistic that with the collective wisdom of everybody
25 who has an interest in moving this along within 90 to 180

1 days, we can find what we need, build what we need,
2 approve what we need. But the nature of the AUSS
3 situation is I don't think anybody knows for certain. We
4 chose 90 to 180 days with the hope that with everybody
5 working on it, we would get there by then.

6 ACALJ NODES: You don't have to go back even
7 to the bankruptcy trustee to extend the bulk service
8 agreements that you have with developers?

9 MR. SHAPIRO: We don't believe so, Your Honor.
10 We believe that under the existing agreements as approved
11 by the court, that those can be extended. Again, we
12 believe that's because the, certainly with respect to the
13 two agreements, in particular, the moneys that are being
14 paid are not coming out of the estate, but coming out of
15 the developers' pockets. And under the order that Judge
16 Marlar approved, allowed the Commission to appoint the
17 interim manager. He also has certain powers, I believe
18 Mr. Gellman will agree, that will allow the interim
19 manager to enter into the third agreement.

20 ACALJ NODES: Thank you. Go ahead with your
21 direct examination.

22 MR. SHAPIRO: Thank you.

23 Q. BY MR. SHAPIRO: Mr. Tompsett, is it Johnson
24 Utilities' position, absent fulfillment of the conditions
25 set forth in J-4, it would not be able to extend safe,

1 reliable, and adequate wastewater utility service to the
2 area permanently certificated to AUSS?

3 A. Yes.

4 MR. SHAPIRO: Thank you. I have nothing
5 further, Your Honor. I would move Exhibit J-4; I believe
6 I moved J-3.

7 ACALJ NODES: Any objection to J-3 or J-4?

8 (No response.)

9 ACALJ NODES: J-3 and J-4 will be admitted
10 into the record.

11 Mr. Lutz, did you have any questions for
12 Mr. Tompsett?

13 MR. LUTZ: Nothing, Your Honor.

14 ACALJ NODES: Mr. Wiley.

15 MR. WILEY: I have a couple of questions for
16 Mr. Tompsett. I also wanted to make a comment on
17 Exhibit J-4. The way Exhibit J-4 is written requires ADEQ
18 to do certain written approvals regarding several issues
19 such as capacity as well. I had talked to both
20 Mr. Gellman and Mr. Shapiro in advance of them filing this
21 exhibit, and the consensus among the parties is that there
22 are several ways that both the ACC and Johnson would
23 demonstrate compliance with those conditions regarding
24 such thing as capacity issue.

25 For example, Johnson has filed an APP

1 amendment regarding the chemical treatment plant to get
2 additional capacity for the plant itself if DEQ grants
3 that APP amendment.

4 I would ask Mr. Gellman and Mr. Shapiro, give
5 their consensus as to how Johnson would present those
6 conditions in Exhibit 4.

7 ACALJ NODES: I will give them an opportunity.

8 MR. SHAPIRO: We have discussed these with,
9 Mr. Wiley on behalf of Centex. I believe Mr. Wiley is
10 correct. The goal here is to get Johnson the things it
11 needs, the kinds of conditions and the law with respect to
12 be provided. Nobody contemplates that Mr. Owens, for
13 instance, is going to write a letter to Mr. Johnson saying
14 we agree.

15 There are a myriad of different ways that the
16 approval requirements can be met, and as soon as Johnson
17 Utilities has something that it feels satisfies that
18 condition, it will be an item that it can submit to Staff.
19 We don't envision there's one particular form of approval
20 that's required.

21 ACALJ NODES: Ultimately, it's DEQ's decision
22 as to whether compliance with their concerns is achieved,
23 isn't it?

24 MR. SHAPIRO: That would be correct, Your
25 Honor. And we're certainly not here trying to have this

1 Commission bind ADEQ in some fashion. I think it's
2 important to make that clear. They are an important
3 player in this process, and we will need certain approvals
4 from them, and they will determine when they have received
5 what they need to issue those approvals, and they will
6 determine the form in which those approvals are issued.

7 ACALJ NODES: I know that there are some DEQ
8 representatives here, and I would like to, at some point,
9 invite them to testify, or at least if they're
10 uncomfortable with that, make some comments regarding the
11 agreement, and weigh in with DEQ's position.

12 Mr. Gellman.

13 MR. GELLMAN: Your Honor, in response to
14 Mr. Wiley's comments, the language in the Exhibit J-4 was
15 not intended to be restrictive. It was intended to be
16 flexible by written confirmation. We weren't looking for
17 any particular item. We were just, again, looking for
18 something that shows us, since Johnson has raised these
19 concerns before extending its CC&N into AUSS' service
20 territory, since they have raised these concerns, that we
21 have some indication that the permitting and some of the
22 other issues that are listed in Exhibit J-4 are taken care
23 of. So we weren't targeting one specific item.

24 And speaking for Staff, the intent of the
25 language was to be broad and flexible as far as what

1 constitutes written confirmation or written approval by
2 ADEQ.

3 ACALJ NODES: And for the record, Mr. Gellman,
4 it's my understanding that Staff and the other parties
5 have been working with DEQ cooperatively to try to resolve
6 some of these issues that DEQ has raised; is that right?

7 MR. GELLMAN: Your Honor, that is correct. We
8 have been working closely with the Arizona Department of
9 Environmental Quality with regards to the interim
10 solutions and with regards to getting a permanent solution
11 in place, again, to address the health and safety concerns
12 that both agencies have and the other parties share.

13 ACALJ NODES: All right. Mr. Wiley, do you
14 have some questions?

15 MR. WILEY: I just have a couple quick
16 questions for Mr. Tompsett.

17

18 CROSS-EXAMINATION

19 BY MR. WILEY:

20 Q. Mr. Tompsett, subject to compliance with the
21 conditions set forth in Exhibit J-4, it is Johnson's
22 intent to become the permanent CC&N holder and wastewater
23 provider to the AUSS territory as revised on Exhibit J-3;
24 correct?

25 A. That's correct.

1 Q. And is it also fair to say that Johnson will
2 seek compliance with all the conditions set forth in
3 Exhibit J-4 as quickly as it can?

4 A. That's our intent, yes.

5 MR. WILEY: I have no more questions, Your
6 Honor.

7 ACALJ NODES: Mr. Gellman.

8 MR. GELLMAN: Yes, a couple of questions.
9

10 CROSS-EXAMINATION

11 BY MR. GELLMAN:

12 Q. Mr. Tompsett, just to clarify a couple things,
13 Section 17 on both exhibits J-1 and J-3, they were never a
14 part of AUSS' CC&N; correct?

15 A. That's correct.

16 Q. And Johnson has indicated that it no longer
17 desires to extend its CC&N into Sections 19 and 30, but it
18 doesn't oppose the deletion of AUSS' CC&N from those two
19 particular areas, Section 19 and 30; correct?

20 A. That is correct.

21 Q. And you mentioned in your direct examination
22 this afternoon that Johnson is receiving payment from the
23 developers as a result of what's been called the
24 Castlegate and Centex agreements; correct?

25 A. We have been, that's correct.

1 Q. And Johnson has received partial payment from
2 the interim manager, First National Management, who is
3 acting on behalf of AUSS for this effluent services it's
4 providing; correct?

5 A. Yes. We received three payments in the amount
6 of \$15,000 total.

7 Q. Is Johnson tracking how much it's getting from
8 the interim manager versus how much it's not getting at
9 this point?

10 A. Since we started this original -- when we had
11 the original agreement with AUSS starting in June, we have
12 billed for effluent treatment along, we billed
13 approximately a little over \$145,000 worth of effluent
14 treatment. We received no payments towards those amounts
15 prior to the interim manager being appointed. As I
16 indicated earlier, since the interim manager has been
17 appointed, we've received \$15,000 in payments. We do have
18 outstanding amounts in excess of \$130,000 for service for
19 effluent in this area.

20 Q. Just to follow up on my previous question,
21 Johnson's accounting for that are basically going to --
22 having records to show what has been paid versus what has
23 not been paid from the point that bulk services commenced
24 to the present day; is that a fair statement?

25 A. That's a fair statement. We're keeping

1 separate customer ID numbers for each of the individual
2 accounts.

3

4

FURTHER EXAMINATION

5 BY ACALJ NODES:

6 Q. Since the interim manager took over, are all
7 of the invoices current?

8 A. Not at this time, Your Honor.

9 Q. How much are the amounts deficient since the
10 interim manager took over? You said they've been billed
11 145,000 but you've only received 15,000. Does that
12 include the amounts that were billed for services prior to
13 the interim manager taking over?

14 A. That does include those amounts, Your Honor.
15 At this point, the invoices to the interim manager are
16 anywhere from 15 to \$18,000 per month. And we have been
17 receiving payments of approximately \$5,000 per month.
18 Now, in my conversations with the interim manager, I
19 understand those are going to be increased here in the
20 near future.

21 Q. What is your remedy or proposed remedy for the
22 shortfall in the amounts under the bulk service agreement?
23 Are you taking any action to seek payment for those
24 amounts?

25 A. Yes, Your Honor. Part of the action that

1 we've taken to receive payments for those amounts has been
2 to, for lack of a better description, carve off the
3 separate developments that are now being paid by some of
4 the builders themselves. The Castlegate development, for
5 example, carves out a large number of those homes that
6 were originally being billed to the interim manager. The
7 Centex agreement removes another few hundred homes from
8 the Las Praderas subdivisions, Ocotillo Meadows, and
9 Meadow Vista subdivisions. Those are being paid
10 separately by the developer. We have not only reduced the
11 invoice amounts to the interim manager, my understanding
12 he's collecting enough money to catch up here in the near
13 future.

14 Q. The shortfall is due and the interim manager
15 is -- first of all let me ask, what is the rate under the
16 bulk service agreement that you're currently billing the
17 interim manager, and is it different than the rates that
18 are being billed to the developers, the separate
19 developers?

20 A. The rate is different. If we refer to the
21 agreement, I can tell you what the exact amount is. The
22 agreements with the developers are billed at a rate based
23 on an individual residence. The agreement with the
24 individual manager representing AUSS is billed on a bulk
25 effluent treatment rate.

1 Let's see. I believe the rate to the interim
2 manager, Your Honor, is \$3.53 per thousand gallons of
3 effluent delivered.

4 Q. Then what about the rates to the developers?

5 A. The developers are being billed at a rate of
6 \$30 per month, which was the CC&N tariff rate for AUSS for
7 those areas.

8 Q. \$30 per than month per customer?

9 A. Correct.

10 Q. Why are the developers being billed in a
11 manner that's separate from the interim manager?

12 A. The physical limitations of the system require
13 that we try to separate the manner in which we bill, Your
14 Honor. The Castlegate development, for example, can be
15 flowed directly to the Pecan wastewater treatment plant.
16 The Centex developments, Las Praderas and Meadow Vista,
17 can now be directed directly to the Pecan wastewater
18 treatment plant.

19 Until such time as the Links wastewater
20 treatment plant bypass can be constructed, all of the
21 Cambria subdivision flows into the Links wastewater
22 treatment plant and is partially treated. We don't have a
23 mechanism to physically transfer those homes directly to
24 Johnson's Pecan plant at this time.

25 Q. In the prior proceeding, I believe there were

1 some issues raised with respect to the Links plant and one
2 other plant that -- where there were some overflow type
3 issues. Can you briefly address what the current status
4 is of those -- identify, first of all, the names of the
5 plants and what the status is operationally of those
6 plants.

7 A. Yes, Your Honor. On the exhibit that they
8 have in front of you, the first wastewater treatment plant
9 is identified as the Links wastewater treatment plant, and
10 it's located in about the middle of the drawing, just
11 above where it's labeled Cambria Homes.

12 When Johnson was asked to intervene in this by
13 ADEQ and the Corporation Commission Staff, the effluent
14 recharge basins at the Links plant were in the process of
15 overflowing. They had been filled with sludge and the
16 ponds were perking, so the Links plant was operating in
17 such a manner that it was discharging effluent into these
18 ponds. The effluent was only partially treated, so the
19 ponds were, from what we were told, within an hour or two
20 of overflowing into the streets of the Links RV park.

21 When we entered in the original agreement,
22 even before the bankruptcy attorney, we went ahead and
23 bypassed all that effluent discharge from the -- into the
24 ponds, and directed it directly down to our Pecan
25 wastewater treatment plant. That essentially stopped the

1 overflow problem, because it gave the plant operator the
2 opportunity to pump effluent from those ponds that were
3 ready to overflow into an effluent system, have Johnson
4 Utilities treat it at that time.

5 So ultimately, today, the ponds have been
6 drained. They're in a state where the sludge is removed,
7 and the ponds can at some point here in the near future be
8 filled in and covered up and the problem goes away.

9 Q. We had some testimony in the prior phase of
10 this proceeding about a potential salvage value of, I
11 guess they're called package plants. Is there still, in
12 your opinion, a salvage value to the Links plant after?

13 A. Yes, Your Honor. As part of agreement with
14 the trustee, and in the settlement agreement, the builders
15 in total had agreed to decommission the Links wastewater
16 treatment plant. And from my understanding, they are
17 going to salvage what they can from those materials, sell
18 them, and I believe the proceeds go to the trustee.

19 Q. That will be included in the AUSS bankruptcy
20 estate, then, as one of the assets?

21 A. Yes, Your Honor.

22 Q. I'm sorry, go ahead with your description of
23 the other plant.

24 A. The other wastewater treatment plant that was
25 having problems is right on Ocotillo, it's on this

1 drawing, it's labeled as the Ocotillo Meadows wastewater
2 treatment plant.

3 In an effort to get this wastewater treatment
4 plant decommissioned, the only flows that were going to it
5 at the time back in June or July were the Las Praderas
6 subdivision, which is there. But we have subsequently
7 removed -- there was a lift station that was pumping raw
8 wastewater flows into the Ocotillo Meadows subdivision.
9 We have since decommissioned the lift station, and flows
10 from the Las Praderas subdivision now go directly to the
11 Pecan wastewater treatment plant. As soon as that
12 occurred, the Ocotillo Meadows wastewater treatment plant
13 was able to be shut down.

14 The problem they were having there was that
15 the effluent that was coming out of the wastewater
16 treatment plant was being again discharged into recharge
17 basins that weren't working. So there was standing
18 effluent in ponds that were 10, 15, 20 feet from existing
19 homes, and that's when everybody was having their West
20 Nile virus scare with mosquitos, also. By turning the
21 plant off and stopping the flow of effluent into the
22 recharge basins, the ponds dried up and the plant no
23 longer operates.

24 Q. There were some photographs presented at a
25 Commission open meeting of some of those situations; is

1 that right?

2 A. That's correct. And my understanding now that
3 Centex has constructed a bypass, they've received approval
4 from ADEQ to build the permanent bypass to the wastewater
5 treatment plant, and then started the decommissioning of
6 this Ocotillo wastewater treatment plant. Same type of
7 situation occurs there, where any salvage value goes to
8 the trustee's estate or AUSS' estate.

9 Q. I raised this briefly with Mr. Shapiro, but
10 the remaining DEQ issues that are listed in this, I guess
11 for lack of a better word, settlement agreement, or
12 settlement conditions, do you have a feeling for how long
13 it will take to completely resolve the entirety of those
14 concerns raised by DEQ?

15 A. Part of our agreement in taking on the CC&N,
16 one of the conditions that we specifically did not want to
17 be responsible for was the decommissioning of the
18 wastewater treatment plants. We gave the builders the
19 avenue and the tools to decommission those and turn them
20 off. The problem is, my understanding, is that both
21 wastewater plants are still out of compliance with ADEQ.
22 They need to be decommissioned, they need to be taken
23 apart.

24 But as far as the timing on the other issues
25 not related to the wastewater treatment plants themselves,

1 I think Mr. Shapiro described it correctly in that we've
2 entered into agreements that gave us 90 to 180 days for
3 the service, to try to resolve these problems, and I think
4 that will be adequate to resolve our problem.

5 Q. One of the conditions in this document refers
6 to assets located within either public rights-of-way or
7 easements that would be ultimately transferred to Johnson.
8 Are any of those issues situations that you need to
9 resolve with Pinal County, or are these all private
10 right-of-way type issues?

11 A. Your Honor, it's going to involve a number of
12 jurisdictions. Since the bankruptcy hearing, we have had
13 my personnel looking into some of these issues, and we've
14 run across easements and dedications that are going to be
15 required of two different homeowners associations, Pinal
16 County, some we're just not sure of yet.

17 The 12-inch sewer line that is shown in
18 Section 21, just based on the paperwork that we received
19 from the bankruptcy hearing, there were 10 or 12 different
20 individual homeowners that were apparently promised moneys
21 from AUSS that had not received them for easements over
22 their properties. So it is going to involve a number of
23 entities.

24 Q. Again, you believe that these issues should be
25 able to be resolved within the 90- to 180-day period; is

1 that right?

2 A. Your Honor, we're optimistic that we can get
3 that done.

4 Q. Paragraph E of the conditions refers to these
5 deferrals of deferred debts, and by that I guess you mean
6 amounts billed for bulk wastewater treatment but as yet
7 not reimbursed to Johnson Utilities; is that right?

8 A. Your Honor, this would include those items as
9 well as costs incurred by JUC specifically regarding this
10 hearing. We've incurred a lot of -- a number of costs
11 with attorneys, engineers, design requirements, purchase
12 of equipment to solve the problems when things are
13 eventually determined, so...

14 Q. Let me ask you this: Can you break down what
15 the current level of unreimbursed bulk wastewater
16 treatment is as well as the other miscellaneous costs
17 associated with the acquisition of the AUSS assets?

18 A. I believe I can give you a rough idea, Your
19 Honor. As far as the interim manager is concerned, that
20 does include some fees that were prior to his taking over
21 operations of that, we have in excess of \$130,000
22 uncollected. Fees that would include engineering designs,
23 purchase of flow meters, attorneys' fees, management fees,
24 and operational fees out there, we have in excess of
25 \$300,000.

1 And as I indicated earlier, the Centex
2 agreement, part of the Centex, I'm sorry agreement, the
3 Elite Homes agreement and the Providence, which is the
4 Castlegate agreement, the total of those are about \$46,000
5 but they've only been recently billed. They're less than
6 30 days old. Up until that point they have been current
7 on their invoices.

8 Q. So you represented previously that the
9 developers who are being provided service in separate
10 agreements are current, and the number you just gave, the
11 \$40,000 figure, is an amount that has been billed but are
12 not yet past due, but you have an expectation that they
13 will be paid in a timely manner?

14 A. Yes, Your Honor. The agreements stipulate
15 that the invoiced amounts be paid within 30 days of
16 receipt. They were only invoiced within the past week.
17 So I anticipate that those -- we haven't had any
18 difficulty collecting those in the past from the
19 developers.

20 Q. So as of this point in time, there's an
21 expectation by Johnson that approximately \$430,000 will be
22 deferred in accounts, and later submitted in a future rate
23 application by Johnson to be collected from ratepayers.
24 Is that your expectation?

25 A. Yes, Your Honor, that's the expectation.

1 Q. Mr. Tompsett, are you aware of whether there
2 are any other entities that may seek to claim ownership
3 rights to any of the remaining AUSS assets, or have all of
4 those rights been extinguished pursuant to the bankruptcy
5 court's order, and without -- I'm not asking you to give a
6 legal opinion, but just based on your opinion of what you
7 know of the proceeding.

8 A. Your Honor, it is my understanding that the
9 bankruptcy judgment and settlement agreement did take care
10 of all of the outstanding issues.

11 ACALJ NODES: Let me ask you, Mr. Shapiro,
12 this really is a legal question, I guess. What is your
13 understanding of the status of any remaining claims that
14 may be made by some other entity?

15 MR. SHAPIRO: Your Honor, as to AUSS' assets;
16 correct?

17 ACALJ NODES: Yes. Any of the assets that are
18 within the area for which Johnson is seeking to be
19 extended in their CC&N.

20 MR. SHAPIRO: The settlement agreement that
21 was entered into by the trustee, developers, and Johnson
22 Utilities contemplates the free and clear transfer of the
23 utility assets, which again would include those plant
24 items necessary for Johnson to extend permanent service,
25 easements, rights-of-way, et cetera.

1 In addition, there has been a search done to
2 determine whether or not there were any liens filed
3 against those assets. I believe actually Mr. Wiley did
4 that. He was not able to locate any. Nor were we able to
5 locate any orders of this Commission allowing any of AUSS'
6 assets to be encumbered. And as I'm sure you know,
7 pursuant to 40-285, the encumbrance of any AUSS assets
8 would require Commission approval or would be void.

9 So if you couple those three factors together,
10 we have a high degree of confidence that when Johnson
11 Utilities obtains the conveyance by the bankruptcy trustee
12 that it will obtain those assets free of any legitimate
13 claims.

14 It is always possible that somebody may
15 believe, and there are a number of people who do
16 apparently have claims to either AUSS' assets or personal
17 guarantees from the AUSS proprietor. It's always possible
18 there may be some battle down the road, but we do not
19 believe there should be any legitimate claims attached to
20 any assets that Johnson Utilities needs to provide
21 permanent service.

22 ACALJ NODES: Mr. Wiley.

23 MR. WILEY: I was just going to say, Judge, I
24 did just an Internet research of the county recorder's
25 website to see if anybody had filed liens against AUSS,

1 regarding their assets. None came up in the computer
2 search.

3 I also agree with Mr. Shapiro, I don't think
4 you can lien utility assets under 4285. I think it's
5 4285.C says if you don't get Commission approval to
6 encumber the assets, the transaction is void. I believe
7 by operation of statutory law you can't lien those assets.

8 I also believe if the ACC ultimately issues an
9 order approving the permanent transfer of the CC&N and the
10 utility assets to Johnson as a result of this proceeding,
11 that essentially acts as a conveyance of those utility
12 assets of Johnson free and clear by the way that statute
13 operates.

14 ACALJ NODES: Mr. Wiley, for example, we had a
15 claim at the last hearing by RS Investments that they had
16 an ownership interest in some of the AUSS assets. As I
17 understand it -- and they have withdrawn from the
18 proceeding, or at least their counsel has -- is there an
19 appeal period after which the bankruptcy court's ruling
20 becomes final?

21 MR. WILEY: Let me address that in two parts.
22 The claim that RSI had as an ownership interest was they
23 held a promissory note regarding AUSS making payments for
24 acquisition of the Meadow Vista treatment plant. Whether
25 that arises to an ownership interest in the Meadow Vista

1 plant is somewhat of an interesting legal question.
2 Because of the dilapidated state of that plant RSI did not
3 want to take ownership of it, because if they did, they
4 would be responsible for all the lack of compliance with
5 the DEQ requirements.

6 The net result of what happened at the ACC
7 hearing is RSI made -- at the bankruptcy hearing, RSI made
8 objections to the settlement agreement. The judge looked
9 at those objections and disagreed, based on a lack of
10 evidence presented by RSI, and approved the settlement
11 agreement as a result of that.

12 I believe there is a 10-day appeal period for
13 bankruptcy. I'm not a bankruptcy lawyer, but that's my
14 understanding. The lawyer for RSI has represented to the
15 trustee that he does not plan on filing an appeal. And
16 that's as current information as I have on the appeal
17 issues.

18 ACALJ NODES: The bankruptcy court's order was
19 issued on November 29th, 2004; is that right?

20 MR. WILEY: I don't think the actual -- I
21 don't know the answer to that. I'm not sure when the
22 order was issued. I have not seen a copy of it. I
23 believe either Mr. Gellman or Mr. Shapiro actually has a
24 copy of the order. You may be looking at the minute
25 entry, which is not the final order issued by the

1 bankruptcy judge.

2 ACALJ NODES: Mr. Gellman, can you answer or
3 clarify those issues as far as appeal process? When a
4 final order might be expected, what do you expect, any
5 claims, additional claims to be submitted?

6 MR. GELLMAN: Your Honor, I'm not sure if
7 there are any additional claims that we're expecting from
8 our perspective. As far as what you have before you is a
9 minute entry. The hearing that was held on the settlement
10 agreement was held on November 29th, and I agree with
11 Mr. Wiley that the judge disagreed with the objections
12 from RS Investments in that proceeding, and we haven't
13 received any indication that anybody is intending to
14 appeal.

15 My understanding is the order might be out,
16 the actual formal order. I haven't had a chance to check
17 the docket for the bankruptcy court, but I would expect
18 that if it's not out already, that it would be out in a
19 matter of a couple of days and we can provide that as soon
20 as it's made available.

21 ACALJ NODES: Your understanding is consistent
22 with Mr. Wiley, that you believe there's a 10-day appeal
23 period from issuance of that order by the court?

24 MR. GELLMAN: I believe that's the case.

25 ACALJ NODES: All right.

1 Mr. Shapiro, do you have any redirect
2 examination?

3 MR. SHAPIRO: I do, Your Honor. I wasn't sure
4 if Mr. Gellman was finished.

5 MR. GELLMAN: Your Honor, I actually had a few
6 more questions.

7 ACALJ NODES: For Mr. Tompsett?

8 MR. GELLMAN: Yes.

9 ACALJ NODES: Why don't we take your
10 questions, then we'll take a short break so the court
11 reporter can take a rest, and we'll come back.

12 Go ahead, Mr. Gellman.

13

14 CROSS-EXAMINATION CONTINUED

15 BY MR. GELLMAN:

16 Q. Mr. Tompsett, there's been discussion about
17 the 130,000, approximately, that's still outstanding. Is
18 it fair to say that a majority of that or a significant
19 amount of that was outstanding before the interim manager
20 took control of the operations and management of AUSS?

21 A. Yes. I believe approximately half of that is,
22 happened prior to the manager takeover.

23 Q. And since, I guess, have you been out on the
24 sites of both the Meadow Vista and the Links wastewater
25 treatment plants during the course of this whole series of

1 events?

2 A. Yes, I have.

3 Q. And is it fair to say there's been significant
4 cleanup of those two sites since the beginning of June
5 until the present day?

6 A. Yes, I would agree with that. The interim
7 manager is doing a great job operating the plants now, and
8 the developers have taken the necessary steps with regard
9 to bypass these two plants. With Johnson doing their part
10 to take the effluent and close down the effluent disposal
11 problems that AUSS was having, it's worked out real well,
12 along with the support of the Commission Staff.

13 Q. And the majority of the cleanup at the sites
14 has taken place since the interim manager has taken
15 control of AUSS?

16 A. I would agree with that, yes.

17 Q. There was mention of the current effluent
18 agreement and a charge of \$3.53 per thousand gallons.
19 That agreement basically replaced the -- partially
20 replaced the agreement that was signed between AUSS and
21 Johnson Utilities that was signed back on June 11th of
22 this year?

23 A. The agreement that was signed prior to the
24 bankruptcy?

25 Q. Yes.

1 A. Yes, it did.

2 Q. And is it fair to say that the charge -- is it
3 fair to say that Johnson was treating effluent as part of
4 the June 11th agreement or the pre-bankruptcy bulk
5 agreement between AUSS and Johnson?

6 A. Yes. We were treating, at that point, a
7 mixture of raw wastewater and effluent, partially treated
8 effluent.

9 Just the physical limitations of the
10 operations of the Links wastewater treatment plant today
11 does not allow it to deliver effluent of the quality that
12 can be used on any golf courses or recharge, that sort of
13 item, but just the fact that the effluent is not going
14 into these recharge basins anymore, it has cleaned up the
15 site around it.

16 Q. Per your knowledge and understanding, was the
17 charge in the pre-bankruptcy bulk agreement for effluent
18 the same as the charge in the current effluent treatment
19 agreement?

20 A. As I recall, yes, it was.

21 Q. And that would be \$3.53 per thousand gallons?

22 A. That's the number I recall, yes. It wasn't in
23 the agreement I have here in front of me.

24 Q. And you mentioned, I believe, in questions
25 from Judge Nodes, the fact that the Links wastewater

1 treatment plant is still, I guess, somewhat in operation
2 in that it hasn't been bypassed to this point. Is that a
3 fair statement?

4 A. That's a fair statement. It has not been
5 bypassed at this point.

6 Q. And ultimately, it would be in the best
7 interests for that, the Links wastewater treatment plant,
8 to be completely bypassed; correct?

9 A. That is correct.

10 Q. But one of the issues associated with, I
11 guess, performing the bypass of the Links wastewater
12 treatment plant is making sure that there are the proper
13 easements and rights-of-way in place?

14 A. Yes. That's what we've been trying to
15 determine. The site that the Links wastewater treatment
16 plant sits on is very small in comparison to the size of
17 the facility, and the effluent lift station that we need
18 to reconstruct to bypass the plant completely appears to
19 be sitting outside of that envelope, even.

20 So in order for, in this part of the
21 conditions, in order for Johnson to construct a Links
22 bypass line, we do need to locate easements,
23 right-of-ways. Just the research that we've done here
24 since the bankruptcy has indicated that those easements
25 and ownership, that is questionable. The easements that

1 we would require to deliver wastewater to the plant are
2 not in place.

3 Q. So to put it bluntly, like in other
4 circumstances surrounding this case, the easement
5 situation surrounding a Links bypass is a little messy
6 right now?

7 A. I would have to agree with you.

8 Q. And depending on when the easement situation
9 is straightened out per this Links bypass issue, not that
10 it would solve all the issues that are necessarily out
11 there, but would solving the easement and rights-of-way
12 issues surrounding the Links bypass significantly affect
13 the timetable as to when a bypass around the Links
14 wastewater treatment plant could be constructed?

15 A. Yes. That would go a long distance in getting
16 us to the comfort level we will need to start
17 construction.

18 MR. GELLMAN: Thank you, Your Honor. No
19 further questions.

20 ACALJ NODES: Thank you. Let's take a
21 10-minute break, then we'll take up redirect.

22 (A recess ensued.)

23 ACALJ NODES: Mr. Shapiro, are you ready for
24 redirect?

25 MR. SHAPIRO: I do, just a couple questions.

1 Maybe I should say a few questions.

2

3

REDIRECT EXAMINATION

4 BY MR. SHAPIRO:

5 Q. Mr. Tompsett, you were asked some questions
6 regarding the accounting that Johnson Utilities is keeping
7 for moneys that it either, A, has not received for
8 service; or B, has incurred in connection with this
9 acquisition. Do you recall that?

10 A. Yes.

11 Q. The only thing that the interim manager is
12 supposed to be paying Johnson Utilities at this point in
13 time is for the services provided under the effluent
14 disposal and treatment agreement?

15 A. That's correct.

16 Q. And that's \$3.53 per thousand?

17 A. That's correct.

18 Q. Under the settlement agreement that was
19 approved by the bankruptcy court, Johnson Utilities was
20 also authorized to retain and apply a \$25,000 deposit that
21 AUSS had been provided?

22 A. Yes, that's correct.

23 Q. Has that been done yet?

24 A. That has not been done yet.

25 Q. So that would be applied to reduce the

1 \$130,000 of unpaid costs for bulk treatment?

2 A. It will be, yes.

3 Q. And in fact, those numbers that you provided
4 in response to questions by Judge Nodes, those don't
5 represent a final accounting of all the costs for either
6 unpaid bulk treatment or acquisition related costs, do
7 they?

8 A. No. That was an accounting up to through the
9 end of November.

10 Q. And Johnson Utilities would anticipate
11 providing a final accounting when this matter is concluded
12 at some point in the future?

13 A. Yes. I do anticipate additional costs.

14 Q. Johnson Utilities understands under the
15 proposed conditions that Staff and Johnson have agreed to,
16 the ultimate ratemaking treatments of those costs would
17 have to be determined by the Commission in a subsequent
18 ratemaking proceeding?

19 A. Yes, I understand that.

20 Q. Johnson does agree it's entitled to some
21 recovery mechanism for its costs of acquiring the right to
22 serve this area?

23 A. That's our thought, yes.

24 Q. That would be the same as the type of costs in
25 your mind that Johnson would incur to extend service to

1 another area?

2 A. Yes.

3 Q. You often do incur management, engineering,
4 and legal expenses or plant costs or design costs when you
5 extend service to other areas; correct?

6 A. Yes, we do.

7 Q. What wastewater is currently being treated at
8 the Links plant, where are those wastewaters originating
9 from?

10 A. It's my understanding right now that the only
11 wastewater that is being treated at the Links is being
12 generated from the Cambria Homes subdivision.

13 Q. Johnson Utilities is not physically able, from
14 a plant perspective, to directly receive flows from that
15 subdivision?

16 A. No. All of the wastewater flows, domestic
17 flows within the Cambria subdivision are directed to the
18 Links wastewater treatment plant.

19 Q. In order to do that, the bypass line that
20 Mr. Gellman questioned you about would have to be built?

21 A. That's correct.

22 Q. So for now, Johnson Utilities cannot provide
23 the services that it's agreed to provide under the
24 effluent agreement with First National Management without
25 the Links plant continuing to operate?

1 A. That will be correct.

2 Q. I believe you answered this, but nor could it
3 directly treat those wastewater flows from Cambria;
4 correct?

5 A. No. We don't have the ability at this time to
6 physically convey the flows from the Cambria subdivision
7 directly to the Pecan wastewater plant.

8 Q. Mr. Gellman also asked you some questions
9 about the necessary easements or rights-of-way or property
10 issues that you need to resolve before a Links bypass line
11 can be built; correct?

12 A. Yes.

13 Q. I think you indicated that once you resolve
14 those easement and property title issues, that would allow
15 Johnson to go forward, one of the things that Johnson
16 needs to do to go forward is to build that bypass line?

17 A. Yes, it would be.

18 Q. Would Johnson Utilities also work with Staff
19 and/or other regulatory agencies to determine whether
20 there are other approvals or legal requirements that must
21 take place before Johnson can construct those facilities
22 outside its CC&N?

23 A. Yes. It's our belief, too, we're kind of at
24 the tip of the iceberg on some of these issues, and as I
25 indicated earlier, we're going to have a number of

1 jurisdictions involved in trying to sort out what actually
2 took place in AUSS.

3 Q. Johnson will make its best and most reasonable
4 efforts to work through all those issues?

5 A. Yes.

6 Q. Another one of the conditions is, I believe,
7 that once Johnson's CC&N is formally extended, it will
8 provide service under its existing tariff or rates and
9 charges?

10 A. Yes.

11 Q. And what is Johnson's currently tariffed rate
12 for sewer utility service?

13 A. The sewer service is currently at 38.50 per
14 month.

15 Q. When Johnson provides service to a customer
16 under its CC&N, it provides additional services beyond
17 what it's currently providing under the bulk agreement;
18 correct?

19 A. Yes.

20 Q. Billing, collection, those types of things?

21 A. That's correct.

22 Q. Is that why Johnson was willing to accept a
23 lower amount under the bulk agreement, and prior to that
24 under the agreement with AUSS for the bulk service?

25 A. That's correct.

1 Q. And I believe you spoke earlier about the
2 condition that the AUSS area was in, I guess a few months
3 ago; there were overflowing ponds, wastewater that
4 couldn't be treated, et cetera?

5 A. Yes, I was.

6 Q. Is it your belief, Mr. Tompsett, that but for
7 Johnson Utilities agreeing to provide bulk wastewater
8 treatment, that those problems would have continued even
9 through today?

10 A. Yes. It was a joint effort between Johnson
11 Utilities and Commission Staff. The only interim manager
12 in all those factors led to resolving this problem.

13 Q. Resolving the problem of wastewater
14 overflowing, not being properly treated, et cetera?

15 A. That's correct.

16 Q. For a period of time Johnson Utilities was not
17 receiving payment for those services; correct?

18 A. That is correct.

19 Q. Not until the developers stepped up, along
20 with Johnson, and entered into separate agreements;
21 correct?

22 A. Right. We were receiving no payments until we
23 entered into agreements with the two different developers
24 and the interim manager.

25 MR. SHAPIRO: Thank you, Mr. Tompsett.

1 Nothing further, Your Honor.

2 ACALJ NODES: Thank you. Mr. Lutz, any
3 further questions?

4 MR. LUTZ: Nothing, Your Honor.

5 ACALJ NODES: Mr. Wiley.

6 MR. WILEY: No, Your Honor.

7 ACALJ NODES: Mr. Gellman.

8 MR. GELLMAN: No, Your Honor.

9 ACALJ NODES: Thank you for your testimony,
10 Mr. Tompsett, you're excused.

11 (The witness was excused.)

12 ACALJ NODES: Mr. Gellman.

13 MR. GELLMAN: Staff would call James Fisher.

14

15 JIM FISHER,

16 called as a witness, having been first duly sworn by the
17 Certified Court Reporter to speak the truth and nothing
18 but the truth, was examined and testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. GELLMAN:

22 Q. Please state your name and business address
23 for the record.

24 A. My name is Jim Fisher. My business address is
25 Utilities Division of the Arizona Corporation Commission,

1 1200 West Washington, Phoenix, Arizona.

2 Q. And what is your current title with the
3 Arizona Corporation Commission?

4 A. I'm executive consultant with the Utilities
5 Division.

6 Q. And could you please describe your
7 responsibilities as an executive consultant.

8 A. Primarily I'm an analyst and a team leader on
9 water and wastewater review and recommendation; a liaison
10 with the ADEQ and DWR regarding entitlement for developing
11 properties. I do some technical writing and analysis.

12 Q. And how long have you been at your current
13 position with the Corporation Commission?

14 A. Jeez, the current role and responsibilities
15 I've been at for four and a half years.

16 Q. And is it in your current position that you
17 became involved in the matters before us involving the
18 Arizona Utility Supply & Services and Johnson Utilities
19 Company?

20 A. Yes, sir, it is.

21 Q. And how long have you been involved with the
22 proceedings?

23 A. The proceedings, the docketed matter for
24 today's issue, I believe I was the initial analyst on the
25 AUSS CC&N. Subsequently, when AUSS was seeking to modify

1 its CC&N, when it was out of compliance, and when the
2 applications before us today were formulated, I was also
3 the Staff member in charge.

4 Q. And there are two applications that we are
5 dealing with today; correct?

6 A. Yes, sir, there are.

7 Q. One of those applications is to deal with
8 deletion of Section 22 from AUSS' CC&N, and extension of
9 Johnson's CC&N into that area; correct?

10 A. Yes, sir.

11 Q. And the other matter before us today,
12 basically, is to delete all of AUSS' CC&N, and then to
13 extend Johnson's CC&N into part of the other sections;
14 correct?

15 A. Yes, sir. During the pendency -- the original
16 application by AUSS was to delete Section 22, the
17 Castlegate section, from its certificate of convenience
18 and necessity, as it was unable to acquire appropriate
19 regulatory authority. During the pendency of that
20 application, AUSS' noncompliance and myriad of service
21 problems and problems with Department of Environmental
22 Quality came to light as well as the threat to public
23 health and safety.

24 During joint meetings with DEQ, Johnson
25 Utilities, AUSS, and Commission Staff, it was derived that

1 AUSS was no longer able to continue, and therefore sought
2 to have all of its CC&N deleted and transfer its assets to
3 Johnson Utilities.

4 During the hearing on that matter in July we
5 took a recess, and subsequently AUSS filed for bankruptcy.

6 Q. And the first application involving Section
7 22, that was filed sometime back in 2002; correct?

8 A. Yes, sir, it was.

9 Q. And the other application to deal with sort of
10 the rest of the territory was filed earlier this year,
11 approximately late May, early June of this year?

12 A. Yes, it was.

13 Q. Did you write Staff reports on both
14 proceedings?

15 A. Yes, sir, I did.

16 Q. And for the record, the Staff report for May
17 of 2004 has been marked as Exhibit S-1. Was that Staff
18 report concerning the, initially the Section 22 deletion
19 and extension?

20 A. Yes, sir, it was. Or is, rather.

21 Q. And that was written entirely by you?

22 A. Yes.

23 Q. And then turning to the second Staff report
24 that has been marked as Exhibit S-2 for purposes of
25 identification, was that Staff report written to, I guess,

1 supplement your findings and recommendations based on the
2 new application that was filed by AUSS and Johnson for
3 deletion extension of the entirety of AUSS' CC&N area?

4 A. Yes, sir, that's correct. On May 17th, 2004,
5 we filed our initial Staff report recommending approval
6 for the transfer of Section 22 from AUSS to Johnson. We
7 also highlighted a number of operational problems that
8 AUSS was having, and requested an order to show cause by
9 the Commission.

10 Subsequent to the issuance of that Staff
11 report, we had additional meetings with ADEQ, Johnson.
12 And AUSS continued to become overwhelmed, and unable to
13 treat the existing subdivisions. So we wrote another
14 Staff report which was to encapsulate what was occurring
15 in a very fluid and dangerous situation.

16 Q. And that was the June 29th, 2004 Staff report?

17 A. Yes, sir.

18 Q. And that was written also entirely by you?

19 A. Yes, sir. I might have had some help, but it
20 was primarily by me.

21 Q. Before we talk about the changes to your
22 recommendations, are there any changes to either Staff
23 report, independent of your recommendations, that you need
24 to make at this time?

25 A. I know there's a couple typos in there, but I

1 don't believe they're material or change any
2 recommendations or thrust of the report.

3 Q. So no substantive changes?

4 A. No, sir.

5 Q. Before we talk about the recommendations,
6 let's talk a little bit about the history of AUSS' tenure
7 as a wastewater provider. Can you summarize their track
8 record as a wastewater provider since they obtained their
9 CC&N?

10 A. AUSS' track record as a provider of wastewater
11 service in certain portions of Pinal County has been
12 fraught with a myriad of problems. Under the Clean Water
13 Act, in conjunction with the Arizona Department of
14 Environmental Quality, you are to construct, obtain,
15 utilize, the best available control technology to treat
16 wastewater. AUSS has failed to do that. AUSS was
17 provided with a certificate of convenience and necessity
18 based upon their assertions that they would, in fact, be
19 operating in conjunction with the appropriate approvals
20 from ADEQ and associated regulatory bodies.

21 During their service to the public, AUSS was
22 cited by the Arizona Department of Environmental Quality
23 with a number of notices of violation, starting out in
24 September of 2002. In fact, Your Honor, if you would look
25 at the initial Staff report from May 17, starting on

1 Page 2, you can see that we've gone through a pretty
2 detailed recitation regarding AUSS' failure to file ACC
3 annual reports. There are notices of violation with ADEQ.

4 Q. Before we go on, Mr. Fisher, during the course
5 of your involvement in the AUSS matters, have you had
6 discussions and made contact with representatives from the
7 Arizona Department of Environmental Quality?

8 A. Yes, sir, I have.

9 Q. Sir, so you are familiar with some of the
10 issues that the ADEQ had with AUSS since they obtained
11 their CC&N back on December 31st of 2001?

12 A. Yes, I am.

13 Q. Was there an issue with AUSS involving gaining
14 possession of the appropriate permits in order to operate
15 the wastewater treatment facilities?

16 A. Yes, sir, there is. In fact, Your Honor, if
17 you look at the May 17th Staff report, there is a
18 discussion starting on Page 6 and going on through 7, 8
19 and 9, regarding the appropriate process on wastewater
20 treatment plant siting and the permitting associated with
21 that under the Clean Water Act.

22 When AUSS came to the Commission and sought
23 its initial CC&N, it had assured that there were existing
24 wastewater treatment plants; that it would acquire those
25 wastewater treatment plants. One of the notices of

1 violation that AUSS received from ADEQ is in regards to
2 its failure to notice the transfer of ownership.

3 More fundamental is that AUSS was unable to
4 obtain a transfer of the appropriate aquifer protection
5 permit, which is fundamental to its licensing and
6 appropriate operations in the State of Arizona.

7 So the initial aquifer protection permits for
8 the plants located in the AUSS service territory, one was
9 issued to a Links homeowners association, and another, I
10 believe, to the -- to a Centex Development Corporation,
11 neither of which were ever or have ever been transferred
12 to AUSS, which is contrary to the initial Commission
13 decision and authorization for certificate of convenience
14 and necessity.

15 Q. And I think you discuss this also in your
16 Staff report, but was there -- since AUSS got its CC&N,
17 didn't AUSS ask for several extensions in order to comply
18 with the terms and conditions of the Commission decision
19 giving AUSS its CC&N?

20 A. Yes, sir, they did. As you pointed out, they
21 got their initial decision in December 31, 2001, and by
22 February, 2002, they were requesting a lot of additional
23 time.

24 One of the things that was problematic is that
25 they had been required to evidence ownership of the land

1 underneath one of the sites, I believe it was Links,
2 within 60 days. They quickly filed to extend the time
3 period on that for an initial 90-day extension and then
4 subsequently sought an additional two years to obtain
5 approval.

6 Q. And even with those extensions, it's fair to
7 say that AUSS never came into compliance with the
8 Commission decision giving it its CC&N?

9 A. That is true.

10 Q. And even today, it's fair to say that AUSS is
11 still noncompliant with that decision; correct?

12 A. AUSS is not in compliance with the initial
13 Commission decision authorizing it to serve as a
14 wastewater provider.

15 Q. And some of those conditions that AUSS is
16 noncompliant with basically would render the AUSS CC&N
17 null and void, to the best of your understanding?

18 A. As I read Decision 64228, or 288, AUSS had a
19 number of conditions to comply. In the event they did not
20 comply, the plain language of the decision was that it
21 would be null and void. According to the May 17 Staff
22 report at Page 5, AUSS has a number of requests to modify,
23 and according to my Staff report at that time, there was
24 noncompliance with the 208 plan and the aquifer protection
25 permit, as well as the acquisition of the Links wastewater

1 plant and the Cambria wastewater plant.

2 Q. Switching our attention a little bit, I think
3 we heard a little bit from Mr. Tompsett about this. How
4 would you describe the situation in AUSS' service
5 territory around June 6th to 8th of this year?

6 A. Very bad and getting worse.

7 Q. Why was it getting -- why was it bad and
8 getting worse?

9 A. There had been a number of reports via ADEQ's
10 inspectors regarding the nonpercolation of the leach
11 ponds. In fact, the leach ponds were directly adjacent to
12 residential properties. There weren't appropriate
13 setbacks. They were, depending on one's height, either
14 knee deep or hip deep in a sludge blanket and goo.

15 As you know, out there in that portion of the
16 state it gets pretty hot. In June, the state was faced
17 with its first real problems with West Nile. We had a
18 wastewater treatment plant that wasn't treating its flows
19 appropriately. It was having a number of odor problems,
20 it was creating a health problem. It had limited
21 freeboard stage, limited storage space for its effluent,
22 and it was breaching those walls. It had no means by
23 which to treat the flows that it had agreed to take. And
24 essentially, demand for the system had far outstripped
25 supply.

1 Q. And was there a possibility, based on your
2 analysis and review at that time that there was a good
3 possibility that the wastewater that was not being treated
4 in the two wastewater treatment plants could overflow?

5 A. Yes, sir. In fact, there were overflows. In
6 fact, based on my understanding from the situation, the
7 plants would experience a spillage on its peak usage, as
8 far as there would be a failure to contain things on-site.
9 There was also the off-site spillage concerns as well, but
10 on-site spillage is a regular occurrence.

11 Q. Was the immediate and health and safety issues
12 that you've identified in your testimony resolved at that
13 time with a bulk wastewater transfer agreement?

14 A. There were initial concerns regarding the
15 ponds overflowing. During conversations and discussions
16 with affected developers, Arizona Department of
17 Environmental Quality, Johnson Utilities, and Commission
18 Staff, Johnson Utilities was able to obtain an expedited
19 approval of its aquifer protection permit for the Pecan
20 wastewater treatment plant, and flows were then directed
21 to the Pecan wastewater or water reclamation plant,
22 thereby averting severe health and safety issues.

23 And that was one step in a long march that
24 we're still engaged in resolving those issues.

25 Q. Was another step in the journey, so to speak,

1 a bulk wastewater transfer agreement that was signed
2 between AUSS and Johnson on June 11th of this year?

3 A. Yes. The initial bulk agreement was between
4 Johnson and AUSS, and helped facilitate the transfer of --
5 helped facilitate transfer of all of the assets. It
6 recognized at that point -- excuse me. At that point it
7 appears, from my recollection, that AUSS, its management
8 and ownership, recognized that they were well over their
9 heads, and it was time to make a definitive action to
10 ensure that the health and safety of the served public was
11 met.

12 Q. And that agreement, to the best of your
13 recollection, was to serve or was for Johnson to provide
14 wholesale wastewater and effluent service from AUSS'
15 service territory?

16 A. Yes. Then the contract also had a number of
17 steps by which AUSS would back away, and the entire
18 service territory would come to Johnson.

19 Q. So the agreement recognized that it was but a
20 temporary solution, and that a permanent solution still
21 needed to be found?

22 A. Yes.

23 Q. And the agreement identified the permanent
24 solution as the deletion of AUSS' CC&N and extension of
25 Johnson's CC&N to the service territory of AUSS?

1 A. Yes, sir.

2 Q. And the situation as of July and August are
3 after this bulk, initial bulk transfer agreement was
4 signed, there were still problems at the sites of both
5 wastewater treatment plants within AUSS' service
6 territory?

7 A. Yes. In a situation like this you don't get
8 into it in one day and you're not going to get out of it
9 in one day. AUSS is a train wreck long in the making, and
10 it's a situation that has taken a number of steps by the
11 affected parties, and parties of interest, to resolve.

12 The situation in July and August, there
13 continued to be a huge odor problem. ADEQ recognized the
14 place as a severe environmental nuisance. The leach
15 fields, of course, were still not percolating. Though
16 flows had been taken away, and some of them had been
17 diminished, there were still flows going to those ponds,
18 and they still continued to have some problems. There's
19 the sludge blanket in ponds, and that didn't get
20 eliminated in one day.

21 Q. So at the very least, it's fair to say that
22 the sites of the two wastewater treatment plants, Links
23 and Meadow Vista, still needed to be cleaned up
24 significantly?

25 A. Yes, sir.

1 Q. And that was only part of the problem that was
2 still existing out there?

3 A. Yes. Fundamentally, the most immediate
4 problem was that the ponds were going to overflow.
5 Johnson Utilities stood up and took those flows to ensure
6 that no flows were going to be breaching those areas and
7 impacting the public.

8 More fundamentally, we had the existing
9 wastewater treatment plants which were no longer
10 functioning and still had flows coming to them, which
11 were, at their peak times, creating on-site spillage.

12 Q. And it was around this time, early August of
13 this year, that the bankruptcy filing was made by AUSS,
14 per your understanding?

15 A. To the best of my recollection, AUSS filed for
16 Chapter 7 federal bankruptcy protection late July or early
17 August of this year.

18 Q. And did Staff take action at this time to get
19 an interim manager in place to operate and manage AUSS?

20 A. Yes, sir. We recognized that there was a
21 severe situation. We're very familiar with First National
22 Management and its president, Mr. Ted Wilkinson. He's
23 been fundamental in helping us in another problematic
24 situation.

25 We had a number of discussions with

1 Mr. Wilkinson regarding the AUSS and its situation. He
2 related back to us that he would be able to help to a
3 certain regard, and the only way he really could help is
4 if Staff was able to ensure that the flows would no longer
5 be fully going to the Links and Meadow Vista, but that
6 they would be going to Pecan water reclamation plant. He
7 says the only real solution is to get the flows away from
8 AUSS, as they are plants that are not functioning, and
9 there is no way to have those plants function again.

10 We entered into an agreement subsequent to
11 Commission approval. We obtained an agreement with
12 Mr. Wilkinson, First National Management. They did a
13 complete survey, and have provided an invaluable service
14 in this situation. They have been able to provide
15 independent evaluation and invaluable experience in
16 serving the situation, and making sure that they have an
17 on-site operator to control the situation as best as
18 possible, so that has been very good.

19 They have worked out an agreement with Johnson
20 Utilities to provide payments on the treated effluent.
21 They have run into a number of problems that AUSS created.
22 In effect, we were talking earlier as far as the cash that
23 First National has obtained. There was a billing problem
24 in that AUSS was billing ahead for the service, rather
25 than doing service and billing for it afterwards. So

1 there's been a number of, whole host of problems. And I
2 know that Staff is very happy that we've had First
3 National Management to help us.

4 Q. Part of the reason that Staff, or a big part
5 of the reason that Staff first saw an interim manager, and
6 specifically First National Management, as necessary was
7 because AUSS filed for bankruptcy, and there was
8 uncertainty over who would actually be running or
9 operating the wastewater treatment system of AUSS. Is
10 that a fair statement to make?

11 A. That would probably be as diplomatic as anyone
12 could say.

13 The situation is we had two environmental
14 hazards that had been abandoned by its ownership and
15 management, and we had a federally appointed trustee who
16 specifically assured everyone that he would not take any
17 steps to run that plant or plants because they were
18 outside of running within the law. And that per his
19 appointment, he could not assure the court that he was
20 operating those businesses per the state requirements. So
21 we had two environmental hazards serving the public
22 without management.

23 We're very lucky to have gotten a class act
24 like First National Management to step in and interface
25 with on behalf of the Commission and ADEQ, with Johnson

1 Utilities, and the affected consumers within the AUSS
2 service territory, as well as the developers that were
3 seeking to continue their business practices.

4 Q. You made reference, in discussing the need for
5 the interim manager here, about the Pecan wastewater
6 reclamation facility. That facility is located right next
7 to the AUSS service territory in your understanding;
8 correct?

9 A. Right. I point Your Honor to the map. It's
10 the green box, about a mile south of the AUSS service
11 territory, and labeled Pecan reclamation plant.

12 MR. GELLMAN: For the record, I believe that
13 he is identifying the green box located in, I believe it's
14 Section 17 -- or no, Section 29, in both Exhibits J-1 and
15 J-3.

16 THE WITNESS: Yes, I am.

17 ACALJ NODES: Mr. Fisher, even though the map
18 says that the plant is under construction in parentheses,
19 is it your understanding that that plant has actually been
20 completed?

21 THE WITNESS: Yes, sir. Phase I of that plant
22 has been completed. There was issued an aquifer
23 protection permit, the date of which escapes me as I sit
24 here. We can get that for you, but it has obtained its
25 aquifer protection permit. And in fact, Johnson Utilities

1 has filed to amend its aquifer protection permit with the
2 Arizona Department of Environmental Quality to increase
3 the treatment capacity available at Pecan.

4 Q. BY MR. GELLMAN: Mr. Fisher, is it your
5 understanding that First National has been largely
6 successful in cleaning up a lot of the areas surrounding
7 both the Links and Meadow Vista wastewater treatment
8 plants?

9 A. Yes, sir, it is, to the extent possible. And
10 in conjunction with some of the development, some of the
11 affected developers, one of the prime movers in this
12 situation has been Centex. Staff has spent a lot of time
13 talking with Centex regarding the Meadow Vista plant.
14 When we had our order to show cause hearing, there were a
15 number of troubling photographs showing a large swampy
16 area that was attributable to Meadow Vista. Centex has
17 brought in pumper trucks, drained those nonfunctioning
18 leach fields, brought in a backhoe and cleaned up a lot of
19 the environmental hazard out there. And it's part of that
20 team effort that has really made this whole thing work.

21 Q. And to go back for just a second, the Pecan
22 reclamation plant that we talked about a little bit
23 earlier, that, to your understanding, is owned and
24 operated by Johnson Utilities?

25 A. Yes, sir, it is.

1 Q. I think Mr. Tompsett largely discussed what
2 the current situation is as far as how wastewater and
3 effluent is being treated. Were you here for his
4 testimony today?

5 A. Yes, I was.

6 Q. And would you largely agree with Mr. Tompsett,
7 or would you agree with Mr. Tompsett that the way he
8 described the current situation is accurate?

9 A. To the best of my knowledge, I have nothing to
10 dispute.

11 Q. And that's as far as there being three bulk
12 agreements in place, two between Johnson and developers
13 for wastewater, and one between the interim manager and
14 Johnson for effluent?

15 A. Yes. This has been a very fluid situation.
16 We have Johnson Utilities with a state of the art Pecan
17 plant ready to serve, but we have a certificate of
18 convenience and necessity and the service to retail
19 customers going on by AUSS.

20 In order to ensure that the flows are treated
21 and paid for, the developer stepped forward and funded
22 bulk agreements to ensure that the threat to the public
23 health and safety was partially paid for, and because of
24 the bankruptcy and our inability to transfer or transfer
25 any authorizations.

1 Q. You've recommended in your Staff reports, in
2 both S-1 and S-2, that the AUSS certificates should be
3 deleted at this point and Johnson's certificate should be
4 extended. Will you summarize why Johnson should get the
5 CC&N and AUSS' service territory?

6 A. Yes, sir. Johnson is a fit and proper entity.
7 They are technically fit and capable. They are
8 financially capable. They are contiguous. There's no
9 municipal provider willing to extend service. There's no
10 other utility willing to extend service.

11 Johnson has retained -- rather, obtained
12 approval under the Clean Water Act, CAAG 208 approval
13 process for siting of the Pecan plant. They've obtained
14 the aquifer protection permit. It is an up and running
15 system, it is currently receiving flows, and it is
16 fundamental to resolution of this situation that Johnson
17 be the service provider for that area.

18 Johnson has received a certificate of
19 convenience and necessity from the Commission in
20 previous -- Staff's initial report at Page 3 speaks of
21 Johnson's initial certificates, and then also has a
22 discussion regarding Johnson's ADEQ compliance. And on
23 Page 4 of the May 17, 2004 Staff report, Staff went to a
24 great effort to demonstrate that Johnson has been required
25 to perform a number of compliance duties with the

1 Commission and that Johnson has performed all of those
2 compliance duties.

3 Johnson is in compliance with the ACC, with
4 ADEQ, he's fit and proper, he's contiguous. Nobody else
5 wants to do this.

6 Q. Is it fair to say that there's really no other
7 wastewater provider that is contiguous to the AUSS service
8 territory to the extent that Johnson is contiguous?

9 A. That would be factually correct --

10 Q. And --

11 A. -- and fair.

12 Q. And because of all the bankruptcy proceedings
13 and other goings on surrounding these matters, have you
14 had a chance to look at how this proposal to have Johnson
15 extend its CC&N compares to other possible solutions, both
16 interim and permanent, from a rate impact perspective?

17 A. Yes. From a rate impact, this might be a bad
18 dream for a few customers. But another solution would be
19 a nightmare. We've had discussions on what else is out
20 there, and how else could things be solved or served. And
21 there might be a domestic improvement district that could
22 take flows, but having the capital to fund an
23 interconnection and the fallout from any vault and haul,
24 the payments associated with that is incredibly
25 problematic and very high cost.

1 By the same token, having a municipality such
2 as Queen Creek extend facilities and take those flows
3 would require Queen Creek or any municipality to obtain or
4 fund treatment money so that they can buy capacity.

5 That's one of the fundamental issues that we
6 have to recognize here, is that Johnson has constructed
7 treatment capacity and has capacity available. By him
8 having that capacity available, and not requiring
9 additional payments from existing customers for that
10 treatment capacity, it really makes it far more
11 economically possible, feasible, and palatable.

12 Q. As part of your responsibilities in this case,
13 have you become familiar with the settlement agreement
14 that was filed in the bankruptcy court?

15 A. To a certain regard. It's a little wordy, but
16 I'm there for you.

17 Q. For the record, a copy of the settlement
18 agreement is marked as Exhibit S-3. It is an unsigned
19 copy.

20 Do you have a copy of that settlement
21 agreement before you, Mr. Fisher?

22 A. Yes, sir, I do.

23 Q. And you would say that Exhibit S-3 is true and
24 accurate, to the best of your knowledge, as being the
25 settlement agreement that was filed in the bankruptcy

1 court?

2 A. This is a copy of the settlement that was
3 filed and approved by the bankruptcy court, yes.

4 Q. Could you describe the efforts that Staff took
5 in proposing and advancing that agreement.

6 A. This is a very fluid situation. You had a
7 number of interested parties that wanted to see resolution
8 of this entire matter. Staff at all times tried to ensure
9 that the parties were communicating, had the same goals.
10 We tried to mitigate disagreements, we tried to make
11 people understand the situation, whether it be the
12 trustee, the developers, Johnson Utilities, ADEQ, or our
13 own organization.

14 We've sought to facilitate discussion,
15 information, acceptance, and coming up with a solution.
16 This asset purchase sale agreement was a long time in the
17 making, and a lot of people had to buy into it,
18 fundamentally the trustee, showing that in fact, he had
19 done his due diligence and understood the situation and
20 the resolution of the situation.

21 We contacted and stayed in communication with
22 the Arizona Department of Environmental Quality to
23 facilitate the closure and salvage of two environmental
24 hazards, that being the Meadow Vista and the Links. We
25 stayed in contact and recognized the concerns that Johnson

1 Utilities had on taking the AUSS plant. And we're pretty
2 happy that we've gotten this far in our process, and we
3 look forward to continued resolution.

4 Q. Is it fair to say that the settlement
5 agreement handles what has been discussed today as the
6 closure issues, specifically the closure of both and
7 decommissioning of both the Meadow Vista and Links
8 wastewater treatment plants?

9 A. I'd say it's fair to say it sure sets it up
10 and that it's a short putt for ADEQ from here.

11 The agreement puts in place interested parties
12 that have obtained authority to acquire assets as well as
13 finance the closure of those. ADEQ needs to have some
14 additional meetings to set up the appropriate permits to
15 do the excavation, decommissioning, salvaging, soil
16 testing, that type of situation.

17 ADEQ also has some issues as far as the
18 permitting on the collection facilities. In conversations
19 with the people at ADEQ, they indicated that those
20 meetings would be coming up shortly. They look to
21 facilitating resolution of this issue by way of having a
22 transitional permitting transfer agreement between the
23 developers and ADEQ, whereby the developers will bring in
24 the as-built plans for the plant that they have put into
25 the system, ensuring that there's an appropriate paper

1 trail for everything that's gone on here.

2 Q. Turning to the order preliminary that has been
3 marked and I believe admitted as Exhibit J-4, from Staff's
4 perspective, what is the purpose of the order preliminary
5 set up for lack of a better term?

6 A. Fundamentally, the order preliminary is
7 utilizing our continued efforts to stairstep our way out
8 of a very bad situation. Johnson Utilities is right to be
9 concerned about the condition of AUSS with the existing
10 treatment plants, the unpermitted facilities that were
11 constructed, the lack of appropriate easements, and they
12 are seeking to ensure that they can provide permanent
13 service subsequent to resolving those issues.

14 Staff recognizes that the only way out of this
15 is to have a compliant, appropriately regulated permitted
16 Johnson Utilities doing this, so we've worked to have
17 these issues set forth and adopted.

18 Part of the issue here is the permits and
19 issues associated with the Arizona Department of
20 Environmental Quality. Last week, I met with leadership
21 at ADEQ's water side and they went over point by point the
22 order preliminary, and they indicated that Johnson had
23 filed an aquifer protection permit amendment which will
24 increase their treatment capacity at the Pecan plant, and
25 that that really resolves a lot of their issues. And then

1 going through point by point, ADEQ indicated that there
2 shouldn't be any problems on resolving these issues in
3 conjunction with Johnson Utilities and facilitating a
4 permanent solution for the consumers at AUSS.

5 Q. Is it fair to say that one of the, one of
6 Staff's intentions as far as Exhibit J-4 is to give both
7 Johnson Utilities and ADEQ some breathing room or some
8 space, for lack of a better term, to work out some of the
9 issues that they need to work out between them and not to
10 bind either party into any kind of substantive decision at
11 that point?

12 A. That's correct. We're all adults here and we
13 need to get a bad situation resolved. The more time and
14 flexibility we can give the people to get their ducks in a
15 row, the better off we feel. Staff is just trying to
16 facilitate a solution.

17 Q. Is it fair to say that Staff also understands
18 the need for Johnson to ascertain the, I guess the
19 validity of certain easements and rights-of-way also as
20 part of getting towards those final steps to a permanent
21 solution?

22 A. Yes.

23 Q. Could you, Mr. Fisher, briefly describe what
24 you see as the benefits to this type of arrangement,
25 meaning the order preliminary?

1 A. The order preliminary allows for everyone to
2 be on the same page. It allows for us to continue to
3 stairstep our way out of a very bad situation. It gives
4 Johnson the ability to recognize what it needs, it
5 provides the Commission with a clear approach as to what
6 will be resolved, and what things need to be resolved
7 before a final determination or a final CC&N will be
8 issued.

9 It essentially provides regulatory flexibility
10 to ensure that appropriate actions are taken.

11 Q. Even with that flexibility, do you believe
12 that approving the, I guess the terms in Exhibit J-4, is
13 the fastest and most efficient way to get to a permanent
14 solution to this problem that AUSS caused?

15 A. Yes, it is.

16 Q. Let's turn now finally, I'm sure everybody is
17 happy about this, to the --

18 A. There's three of them asleep in the back.

19 Q. -- to the Staff recommendations. Would you
20 amend -- is it your intention today to amend the
21 recommendations in both your Staff reports to urge Your
22 Honor and the Commission to approve the order preliminary
23 structure?

24 A. Yes, sir, it is. It's my desire that the
25 Staff report of June 29th, 2004 be amended to reflect

1 Staff's recommendation in the order preliminary and
2 adoption of the terms and conditions of the jointly filed
3 agreement.

4 Q. And you are today approving or recommending
5 the approval of deletion of the entirety of AUSS' CC&N,
6 and the extension of Johnson's CC&N into all of AUSS
7 service territory except Sections 19 and 30?

8 A. Yes, I am recommending, consistent with the
9 prior discussions, let's delete all of AUSS' CC&N service
10 territory to the extent that it in fact still exists.
11 Let's extend Johnson's certificate of convenience and
12 necessity for the three marked sections.

13 Q. And you would believe that would be in the
14 public interest?

15 A. I certainly do.

16 MR. GELLMAN: Your Honor, I have no further
17 questions at this time, and move for the admission of
18 Exhibits S-1 through S-3, with S-1 and S-2 reflecting the
19 updated recommendations of Mr. Fisher.

20 ACALJ NODES: S-3 is the asset purchase and
21 sale agreement; is that right?

22 MR. GELLMAN: Right, that is the settlement
23 agreement that was -- we call it, at least I call it the
24 settlement agreement that was filed in the bankruptcy
25 court.

1 ACALJ NODES: And there's also a minute entry
2 here from the bankruptcy court. Is that marked as an
3 exhibit?

4 MR. GELLMAN: It's marked as Exhibit S-4.
5 Since it is a minute entry I would move for the
6 administrative notice of that minute entry.

7 ACALJ NODES: We can go ahead and mark it as
8 S-4, if you represent that's a true and accurate copy.

9 S-1 and S-2 are the prior Staff reports, May
10 17th and June 29th?

11 MR. GELLMAN: Yes, Your Honor.

12 ACALJ NODES: Any objection to admission of
13 S-1 through S-4?

14 (No response.)

15 ACALJ NODES: Those exhibits will be admitted
16 in the record.

17 ACALJ NODES: Mr. Lutz, do you have any
18 questions for Mr. Fisher?

19 MR. LUTZ: No, Your Honor.

20 ACALJ NODES: Mr. Wiley.

21 MR. WILEY: Just a couple of quick questions.

22

23 CROSS-EXAMINATION

24 BY MR. WILEY:

25 Q. Mr. Fisher, Mr. Gellman was asking you some

1 questions about the reasons why you support Johnson
2 Utilities taking over the AUSS CC&N territory. Do you
3 recall those questions?

4 A. Yes.

5 Q. I believe one of the responses you gave was
6 that Johnson has available capacity to take on the
7 wastewater service obligations for the AUSS territory; is
8 that fair?

9 A. Yes.

10 Q. Do you believe that there is sufficient
11 capacity in the Pecan treatment plant to provide service
12 for the entire AUSS territory?

13 A. Yes, I do.

14 Q. And that would include the Centex
15 subdivisions; fair?

16 A. Yes.

17 Q. So in other words, you believe, based upon
18 your analysis, that there is sufficient capacity,
19 treatment capacity existing in the Pecan plant to provide
20 wastewater service to the Centex subdivisions?

21 A. The flows are going to the Pecan. Pecan is
22 treating. I think that is the answer. I mean, it's a
23 factual issue.

24 MR. WILEY: I have no more questions. Thank
25 you.

1 ACALJ NODES: Mr. Shapiro.

2

3 CROSS-EXAMINATION

4 BY MR. SHAPIRO:

5 Q. Mr. Fisher, you're aware it was contemplated,
6 at least as early as 2002, I believe you said when all
7 this started, that Johnson Utilities will take over
8 service in at least Section 22, known as the Castlegate
9 subdivision?

10 A. I believe it was February, 2002 that -- maybe
11 not, maybe it was February, 2003, but I believe that
12 Mr. Lee put in an application for the transfer of Section
13 22 very early on.

14 Q. So the idea of Johnson taking over serving
15 wastewater in this area certainly isn't something that
16 just evolved or arose for the first time in 2004?

17 A. No.

18 Q. Johnson Utilities had agreed to waive hookup
19 fees for certain developers coming into its service
20 territory at that time; correct? You testified to that
21 earlier.

22 I believe you testified earlier, Johnson
23 Utilities, part of the reason it wasn't a ratemaking
24 nightmare was because Johnson Utilities had agreed to
25 forego collecting hookup fees from certain customers in

1 the AUSS area. Is that the reason?

2 A. Johnson has existing treatment capacity
3 available and that has already been funded and installed.
4 The existing customers will just be able to transfer into,
5 transfer their flows into that plant. They will not be
6 required to pay an additional capacity charge to develop
7 that treatment capacity.

8 Q. In fact, some of that treatment capacity was
9 paid for buy some of these developers; correct?

10 A. Yes, sir.

11 Q. Johnson Utilities, are you aware also, has
12 redundancy by interconnecting its various wastewater
13 treatment plants throughout its system?

14 A. Yes, sir. I believe it's reflected in my May
15 17th, 2004 Staff report, it talks about Johnson's system
16 with Pecan, Section 11, and precision plant and the
17 interconnectiveness of the force main associated with it.

18 Q. If something were to happen to the Pecan plant
19 that would allow Johnson Utilities to continue serving by
20 bringing flows to one of the other plants?

21 A. To the best of my knowledge.

22 Q. That's another benefit we could add to the
23 list of things that leads Staff to support Johnson
24 Utilities as being the service provider?

25 A. It's an interconnected redundant system. My

1 engineering coworkers always encourage that.

2 Q. And in the order preliminary structure, as
3 Mr. Gellman characterized it, and you agree in your
4 testimony, Staff also supports Johnson
5 Utilities' determination of its uncovered costs for bulk
6 treatment and the reasonable costs associated with
7 acquisition of utility assets in the CC&N for the this
8 area?

9 A. Yes, we do. We recognize that there's a --
10 there are costs associated with serving in an emergency
11 situation. We recognize that without a surcharge on the
12 existing customers, there will be shortfalls. We have to
13 pay for the interim manager, the rates aren't reflecting
14 Johnson's rates as they sit here today, and there will be
15 additional facilities that need to be constructed, which
16 is a significant burden that Johnson is adopting in this
17 situation.

18 Q. You've been involved in this AUSS situation
19 over the past seven or eight months?

20 A. Yeah.

21 Q. And is it fair to --

22 A. I wish it were that short.

23 Q. Is it fair to characterize this as what is
24 really becoming a fairly complex and time consuming
25 situation for all interested parties?

1 A. Yes, sir.

2 Q. Taken a lot of the parties' resources?

3 A. Yes, certainly has mine. I think a number of
4 your cases have been delayed because of this. So for
5 that, I apologize.

6 Q. Apology accepted, Mr. Fisher.

7 A. There's also a bright side, too, though, as
8 far as, I think one of the things that a nightmare like
9 this has done is highlighted the system works a lot, but
10 it doesn't work every time. And to the extent that ADEQ
11 and the ACC have been able to highlight our processes and
12 work through situations, it's a benefit, albeit a costly
13 one, and we should have undertaken this outside of this
14 situation.

15 MR. SHAPIRO: Thank you very much, Mr. Fisher.

16 THE WITNESS: Thank you, Mr. Shapiro.

17

18 EXAMINATION

19 BY ACALJ NODES:

20 Q. Mr. Fisher, good afternoon.

21 A. Good afternoon, sir.

22 Q. I wanted to ask you a few questions. First of
23 all, the Exhibit S-4, what Mr. -- J-4, sorry, that's the
24 agreement, and I'm looking at specifically No. F,
25 Paragraph F. At the bottom of that paragraph, it refers

1 to until all requisite approvals are obtained, AUSS will
2 still be obligated to provide safe, adequate and reliable
3 service to its certificated area.

4 A. I'm sorry, Your Honor.

5 Q. This is the order preliminary structure. It's
6 the revised Exhibit J-2, your list of conditions, and I'm
7 looking at Paragraph F, the final sentence. Do you see
8 that, the reference I directed you to?

9 A. Nor does this rule of the regulatory
10 Commission ensure that JUC is providing safe, reliable and
11 reasonable service per the Arizona Constitution.

12 Q. No, I'm looking at --

13 A. I'm sorry, I was looking at small F.

14 Q. Large F.

15 A. I'm sorry.

16 Q. Paragraph capital F, the very last paragraph
17 in the entire set of conditions.

18 A. Yes, sir. One of the issues is that until
19 such time as we're able to get past the order preliminary
20 conditions, AUSS is in fact still the certificated entity.
21 First National Management, by appointment by the
22 Commission, is its management.

23 Someone needs to be responsible for that.

24 ADEQ has gone forward and assured Johnson that those are
25 AUSS' issues, and they should stay with AUSS. To the

1 extent Johnson goes through, obtains all of the terms and
2 conditions associated with the order preliminary, then
3 when the Commission extends Johnson's CC&N, it will delete
4 the AUSS CC&N.

5 Q. So essentially, this provision is a kind of
6 protection to ensure that someone remains responsible and
7 for all intents and purposes, it's the interim manager
8 that's acting in the stead of AUSS here in this time
9 period?

10 A. It's AUSS and -- it's AUSS that is responsible
11 for the situation, and this identifies AUSS as the
12 responsible party.

13 The First National Management, the interim
14 manager, will do its best to ensure that there are no
15 problems. And I don't believe that First National will be
16 held accountable for any unforeseen violation or anything
17 like that.

18 Q. Even though, for all intents and purposes,
19 AUSS, as an ongoing entity, ceases to exist?

20 A. Yes, sir. I'm not sure when that occurs, what
21 the timing of that is, whether or not there will be a
22 final declaration from the trustee getting rid of all AUSS
23 claims and issues of the bankruptcy court, and whether the
24 L.L.C. ceases to exist at that point or whether Johnson
25 will be able to obtain resolution of all of its

1 preliminary conditions.

2 Q. Along those same line lines, would it be
3 Staff's expectation that the show cause docket would not
4 be dismissed or dealt with until after all of these
5 conditions are fully resolved?

6 A. Certainly, sir, we want to maintain the order
7 to show cause docket and continue to look to see what we
8 can do with AUSS' ownership and management and the
9 problems they've caused.

10 MR. GELLMAN: Your Honor, if I may add to that
11 briefly. With regards to the order to show cause docket,
12 I think Staff's primary concern, obviously, is to address
13 the health and safety issues, and try and get a permanent
14 solution in place. Even if we do get that permanent
15 solution in place, I don't know, and I would not believe
16 that it would be Staff's intent even at that point to
17 dismiss the complaint and order to show cause against
18 Arizona Utility Supply & Services, L.L.C.

19 Obviously, all of this is complicated by what
20 happens in the bankruptcy court and what ultimately
21 happens with AUSS. But there were violations out there
22 that Staff is accusing AUSS of being the responsible party
23 or being the violating party, and I don't think
24 necessarily because this would be resolved in a
25 satisfactory way, that that would necessarily remove or

1 lead to a dismissal, at least on Staff's part, of the
2 complaint.

3 ACALJ NODES: At a minimum, Mr. Gellman, Staff
4 does not believe it would be appropriate to address the
5 show cause docket at this point in time as far as any
6 resolution of the allegations?

7 MR. GELLMAN: That is correct, Your Honor.
8 Staff is primarily concerned with getting the permanent
9 solution in place.

10 Q. BY ACALJ NODES: Mr. Fisher, one of the issues
11 that's been raised here this afternoon is deletion of
12 Sections 19 and 30 from the AUSS CC&N area that Johnson is
13 now not going to take over. Do you recall that?

14 A. Yes, sir, I do.

15 Q. And Staff doesn't have a problem with that,
16 given the representations, as I understand it, by the City
17 of Queen Creek, that it intends to ultimately serve those
18 sections?

19 A. No, we do not. We look forward to Queen Creek
20 offering service.

21 Q. Are you aware if there are any ongoing odor or
22 safety issues currently with the two malfunctioning
23 plants, that being Ocotillo Meadows and the Links plant?

24 A. Yes, sir, I am. ADEQ's investigator,
25 Mr. Hare, provided an e-mail to Mr. Traubert, Mr. Traubert

1 forwarded that e-mail to me, regarding Meadow Vista and
2 Links wastewater treatment plant. According to ADEQ's
3 investigator in this e-mail that I have, the odor problems
4 at Links as well as discussions with First National
5 Management continues to be a significant problem, and as
6 well as there's what's called hydraulic surging at the
7 plant that may be resulting in some on-site spilling.

8 The plants are inoperable. The plants are
9 overloaded. They are not -- they don't have enough
10 chemical reaction or biological reaction going on in them.
11 They weren't built with state of the art technology. So
12 contrary to what we thought, we thought that the odors
13 would be worse in the heat, but in fact, they've gotten
14 worse during the cold because things have failed to
15 biologically operate.

16 Q. Is Staff aware of customer complaints with
17 respect to the odors?

18 A. I've had a couple customers complain, get in
19 touch with me. I've also heard of these complaints via
20 consultation with ADEQ, as well as First National
21 Management. Their reports to us are replete with the --
22 with concerns about the odors, and with their interface
23 with consumers on our behalf to discuss what's going on
24 with the odors, and discuss how we are attempting to
25 resolve the odor problem from a macro level, on a

1 long-term basis.

2 Q. And it's Staff's expectation that once the
3 bypass of these plants is completed in its entirety, or in
4 their entirety, that both of these plants will be
5 decommissioned and the sites will be reclaimed, so to
6 speak, to the extent that the odor issue should no longer
7 be present. Is that your understanding?

8 A. Yes, sir. That is really one of the next key
9 focus, is obtaining the easements so that there's an
10 appropriate building envelope for Links, so that a new
11 facility or wet well, and a pumping facility can be put in
12 place so that the flows from that area can be completely
13 bypassed of the Links treatment plant. Only by doing that
14 will you eliminate the odor problem. So that's really
15 our, should be our next main focus on how we get a
16 long-term, permanent resolution.

17 To the bulk of your question, the closure and
18 decommissioning and salvage is part and parcel of the
19 holistic solution that we've sought to obtain in this
20 situation, and we are able to get developers to take part
21 in that, and move it through to the trustee and the
22 bankruptcy court, and now we're just looking for you to
23 agree.

24 Q. Okay. And is it, based on the information
25 that you've received, is it your expectation that these

1 odor issues, decommissioning, bypass, cleanup, et cetera,
2 can be accomplished within the six-month time frame?

3 A. Yes. The odor issue particularly. It just --
4 I believe it can be accomplished in the six-month. I
5 believe it can be accomplished sooner than that. However
6 there's a lot of moving parts, and there's a lot of
7 agreement that has to be obtained. I believe Meadow Vista
8 will be resolved sooner than the Links. I believe that
9 bypassing Meadow Vista and doing the cleanup is already
10 underway to a greater extent. Links is more of a problem.
11 But I believe the six-month is a very good target, and
12 hope it would be done soon.

13 ACALJ NODES: Mr. Gellman, did you have any
14 redirect examination?

15 MR. GELLMAN: No redirect, Your Honor.

16 ACALJ NODES: Any other parties have any
17 questions? Mr. Shapiro?

18

19 FURTHER CROSS-EXAMINATION

20 BY MR. SHAPIRO:

21 Q. Mr. Fisher, in order for Johnson Utilities,
22 Staff, developers, to accomplish everything that needs to
23 be accomplished in six months, is it fair to say that a
24 great deal of cooperation from the Arizona Department of
25 Water Quality will be required?

1 A. Yes, sir, and Commission Staff. And the
2 extent that we can facilitate that or continue to
3 facilitate that, that would be great. I think that the
4 Hearing Officer, having procedural conferences every
5 couple weeks, has really been a positive enforcer that
6 everyone has sought to ensure that we continue to work
7 towards resolution. To the extent that Johnson Utilities
8 and ADEQ and the developers want to continue discussions
9 on how we get this whole thing resolved, I'll be happy to
10 help.

11 Q. But you would agree with me that there are
12 some things, particularly governmental approvals, the
13 timing of which may be outside of Johnson Utilities'
14 control to take?

15 A. Sure.

16 MR. SHAPIRO: Thank you. Nothing further.

17 ACALJ NODES: Mr. Fisher, thank you for your
18 testimony. You are excused from the stand.

19 THE WITNESS: Thank you, sir.

20 (The witness was excused.)

21 ACALJ NODES: I know we have in attendance
22 representatives of DEQ, and I believe Mr. Wilkinson on
23 behalf of the interim operator. I just want to give you a
24 chance -- first of all, let me ask DEQ representatives if
25 you have any, if you have a desire to come forward or

1 offer any comments, to clarify or add anything to what has
2 been stated here this afternoon. You don't have to, and
3 I'm not -- I'm trying to avoid putting you on the spot.
4 Hopefully, the record has been a fair representation of
5 what ADEQ is aware of, but I just want to give you the
6 opportunity. I don't want to foreclose the opportunity, I
7 guess is the best way to put it. If you don't want, you
8 don't have to say anything.

9 If you'd make sure the green light is on, then
10 just say who you are and who you're representing.

11 MS. OVERHOLSER: Your Honor, my name is Sonia
12 Overholser. I'm an Assistant Attorney General with the
13 Arizona Attorney General's office representing the
14 Department of Environmental Quality.

15 We did want to come to the meeting today at
16 the invitation of ACC Staff to be available as a resource
17 to answer any questions. We have chosen not to
18 participate in these proceedings, and I would only like
19 the record to reflect that because there are some ongoing
20 issues between the various parties, we cannot comment or
21 we feel precluded from commenting on much of what has
22 transpired today. And I would simply ask that the court
23 consider that our silence not be construed as either
24 agreement or disagreement with any of the things that were
25 stated on the record today. Thank you.

1 ACALJ NODES: Thank you.

2 Mr. Wilkinson, do you want to, since you're
3 here, I'll just give you the opportunity to enter for the
4 record your attendance, I guess is the best way to put it.

5 MR. WILKINSON: Thank you, Your Honor. I just
6 want to say that I agree with what's been going on here
7 today. We have been trying to operate the Links plant.
8 The Links plant is definitely overflowed. It was
9 originally designed for 75,000 gallons a day. It's been
10 improved to supposedly 150,000 gallons a day. It's taking
11 150 to 160,000 gallons a day, and it couldn't create
12 100,000 gallons a day. We're looking for the bypass that
13 will certainly take care of all the complaints we've been
14 getting. I thank you very much.

15 ACALJ NODES: Mr. Fisher indicated, I'm not
16 asking you to give sworn testimony, but he indicated that
17 there were a number of odor type complaints. Is that a
18 fair assessment of what you've been experiencing as the
19 interim operator?

20 MR. WILKINSON: Yes. I'm working with several
21 of the homeowners, and I keep them apprised as to what's
22 going on at any given time. I get maybe two complaints a
23 week. I think there's substantially more out there that
24 just aren't calling in.

25 ACALJ NODES: So you think people are

1 generally aware that there is a solution that's being
2 worked on to try to resolve the issues?

3 MR. WILKINSON: I advise everybody that calls
4 in complaining, what's going on, and there is a light at
5 the end of the tunnel, and that it will be resolved
6 forever.

7 ACALJ NODES: All right, thank you very much.

8 MR. WILKINSON: Thank you.

9 ACALJ NODES: Anything else, Mr. Shapiro? Did
10 you want to make a closing statement? Did you want to
11 offer any other comments, present any other evidence?

12 MR. SHAPIRO: I think just a couple of brief
13 closing comments, no more evidence. If there's any other
14 questions, I'll be happy to answer them on your part.

15 Just briefly, Your Honor, I think I will echo
16 the words of Mr. Tompsett who said, unfortunately, we're
17 still at the tip of the iceberg, or Mr. Fisher, who said
18 that we're stairstepping our way out of a problem. I
19 think all of the parties who have spent seven months or
20 eight months now of working on this matter would agree
21 with that. Staff and Johnson Utilities have presented to
22 you what I think they believe and have worked hard to
23 create as the next step toward the preliminary structure,
24 as Mr. Gellman characterized. You heard the testimony,
25 and it's uncontroverted that Johnson Utilities simply

1 isn't in a position to extend its CC&N or provide service,
2 or to accept conveyance of the facilities it needs to
3 serve, so we would ask you to adopt the order preliminary
4 structure that the Staff and Johnson have put before you.
5 We would ask you to do so -- we recognize the busy
6 schedule that you have as well, but to do so as soon as
7 possible so that we can go forward and take the next step
8 towards permanently resolving the AUSS problem.

9 Thank you.

10 ACALJ NODES: Thank you.

11 Mr. Wiley, any final comments?

12 MR. WILEY: Judge, I have nothing else to add
13 other than to say that Centex supports the deletion of
14 AUSS' CC&N, and transfer of the territory to Johnson on a
15 permanent basis. And we are trying to do everything we
16 can to expedite the permanent solution as quickly as
17 possible.

18 ACALJ NODES: Mr. Gellman.

19 MR. GELLMAN: Your Honor, back on July 16th in
20 my opening statement I kind of compared the situation that
21 we had to a David Lynch film in that it was a strange and
22 unique case. And reflecting a little further, I don't
23 think David Lynch could make this kind of thing up.

24 This has clearly been a strange and unique
25 case involving all sorts of different jurisdictions and

1 challenging issues for all parties to face, and even if
2 Your Honor and the Commission should approve the order
3 preliminary structure here, there are obviously many steps
4 to go, but we believe this to be one of the biggest and
5 most significant steps to take in this process.

6 I think when you have such a strange and
7 unique set of circumstances, you need to be flexible and
8 you need to be creative. And I think because of that,
9 Staff felt that the order preliminary structure, which is
10 based out of A.R.S. 40-282.D, is the type of solution that
11 we need in this case. There are various sorts of issues
12 that need to be worked out, primarily as a result of AUSS
13 causing one heck of a colossal mess here. We've got
14 plants that simply will not work and need to be
15 decommissioned.

16 We've got, as both Mr. Tompsett and Mr. Fisher
17 have stated, all sorts of various permitting approvals and
18 easements, and rights-of-way, and all sorts of other
19 things that need to be sorted out.

20 And so we need a type of structure in place to
21 allow that to happen to give all of the entities that are
22 associated with this case, Johnson Utilities, Centex and
23 the other developers, Arizona Department of Environmental
24 Quality, the flexibility and the breathing room they need
25 to really take a look at these issues, and give them the

1 opportunity to work those issues out in accordance with
2 their concerns and beliefs. And we believe that this
3 order preliminary structure achieves that.

4 And to answer an earlier question from Your
5 Honor, the order preliminary structure obviously hasn't
6 been used in quite a while, has been extremely rare for
7 the past few years. But my understanding is that it was
8 used to some extent maybe as far back as the 1970s with
9 this Commission. I think there's an appellate case or two
10 that has mentioned the order preliminary structure being
11 used, although it doesn't directly address any central
12 legal issues associated with those other decisions, but it
13 is mentioned. So this is something that is rare, but not
14 necessarily unprecedented.

15 I think when you have a situation like this,
16 again, you need to look at flexible and creative
17 solutions. And from Staff's perspective, we believe that
18 the preliminary order is creative, flexible, and will be
19 effective. And I think for those reasons, that's why we
20 believe Your Honor and the Commission should endorse the
21 order preliminary.

22 I'll just say a quick word about Part E, the
23 deferral of the following costs. I think there's an
24 important policy consideration to consider here, and that
25 is, is that when we have this type of situation where we

1 do have health and safety concerns and issues, and potent
2 ones at that, we need to understand that there are costs
3 associated to fixing the problem. And Staff wants to
4 encourage companies to step forward when we have this type
5 of situation and help us and help ADEQ resolve these types
6 of situations.

7 And we applaud what Johnson has done, we
8 applaud what the developers have done in this case. We
9 want to encourage -- we obviously want to be careful about
10 what we're doing when it comes to approving costs like
11 this, or even deferring it, and that's why we have the
12 language that the Commission may review at the appropriate
13 time, which we believe is a full rate proceeding. But we
14 do, from a policy perspective, I believe want to have the
15 company step forward when we have these types of problems.
16 And that's particularly why Condition E, I believe, is in
17 there.

18 In summary, we would just ask Your Honor and
19 the Commission to look at what we've proposed here. And I
20 believe, given the evidence that is on the record now,
21 that both Your Honor and the Commission will find that
22 this is and will be an effective and permanent solution to
23 what we have going on in the AUSS service territory.

24 Thank you.

25 ACALJ NODES: Mr. Gellman, do you believe that

1 this order preliminary structure is something that should
2 be reserved for rare circumstances such as the one that's
3 presented in this case?

4 MR. GELLMAN: Your Honor, in response to that
5 question, I don't know if we would say that the order
6 preliminary structure should be reserved for these types
7 of circumstances. I think this is something that -- this
8 type of structure is something that Staff has contemplated
9 in other cases.

10 But what I will say is that when you have a
11 case like this, where you have again a litany of issues
12 with multiple jurisdictions involved, this seems to be the
13 best solution to sort of get us on a track to deal with
14 those solutions.

15 But there may be other circumstances and it
16 may become a relatively common circumstance, looking into
17 the future, that Staff may recommend this type of
18 structure in more regular types of proceedings. So I
19 wouldn't necessarily limit the order preliminary structure
20 to just this type of extreme circumstance.

21 ACALJ NODES: Well, the advantage, it seems to
22 me, is that it gives some regulatory certainty to the
23 entity seeking the approval, while still reserving the
24 opportunity to resolve some outstanding issues such as in
25 this case where we need to move forward, but there are a

1 number of uncertainties that still exist. Will that be a
2 fair assessment when it may be appropriate for this type
3 of structure?

4 MR. GELLMAN: I would agree with that, Your
5 Honor.

6 ACALJ NODES: But on the other hand, it could
7 be there is a potential for abuse, is there not, if a
8 company seeks to come in and get an order preliminary, but
9 then fails to comply with whatever issues may be
10 outstanding, and therefore they're given some preliminary
11 approval, but never followed up with as far as obtaining a
12 permanent authority, then you have to undo something that
13 was previously approved. Is that the potential danger of
14 this type of approval?

15 MR. GELLMAN: Your Honor, I would agree that,
16 and this is precisely why I believe Staff is in the
17 process of reviewing when, I guess from a policy
18 perspective, they would want to use this type of
19 structure, because like most things, it does have the
20 potential for abuse. But I think if you devise it in such
21 a way you might not have to sort of, quote-unquote, undo
22 what you've done by granting an order preliminary.

23 I think, to use this case, for example, it's
24 basically a two-step process, where we're basically saying
25 that Johnson needs to provide Staff or file, after step

1 one, provided that the Commission approves the first step,
2 which would be the order preliminary, Johnson has to do a
3 certain bunch of things. They have to provide us with,
4 quote-unquote, written confirmation of certain approvals.
5 They have to provide us, by us I mean Staff, with -- and
6 the docket, I would suspect that these things would be
7 filed in the docket, of certain things being done.

8 If those things aren't done then we never get
9 to step two, which is having a subsequent application, for
10 lack of a better term, quote-unquote, having a Staff
11 review, and having it go to the Commission for an actual
12 certificate, because the order preliminary doesn't give
13 Johnson a certificate in this case, it just gives them the
14 opportunity to get a certificate by filing the types of
15 things that are outlined in the order preliminary.

16 ACALJ NODES: And I'm not disagreeing with
17 you. I think that if there's any case that would cry out
18 for this type of regulatory treatment, this is definitely
19 the case. And the reason I even raise this, and we
20 probably don't have to reach it at this point, because
21 it's handled on a case-by-case basis, but I just wanted to
22 explore whether Staff believes -- I think the normal
23 process that the Commission normally and Staff normally
24 recommends is a certificate be granted subject to certain
25 conditions, and if those conditions are not met, then the

1 certificate becomes null and void by operation of failure
2 to comply.

3 And what I don't want to see happen, I don't
4 think the Commission wants to see happen, is if we
5 start -- if we grant this type of treatment in this case,
6 that we get a number of subsequent applications by people
7 where it may not really be appropriate.

8 So anyway, just my observations. We don't
9 really need to argue it at this point. I just wanted to
10 raise the potential concern. But I don't think this is
11 the type of case where that issue would be raised or be a
12 problem. So thank you, for your comments.

13 I do want to echo Mr. Gellman's statements. I
14 think the parties have gone beyond the call of duty here
15 in attempting to resolve what are extremely complex
16 issues, especially once the bankruptcy court was involved,
17 and I commend you for your efforts. I certainly hope that
18 those efforts continue and that we can create, in effect,
19 a win/win situation for the customers as well as the
20 affected entities, and I trust that will occur. And I
21 appreciate DEQ's efforts also in working with the parties
22 to try to resolve these issues, and what was obviously a
23 dangerous and very difficult situation.

24 So with those comments, we'll consider the
25 matter submitted on the record, and I'll take it under

1 advisement subject to issuance of a recommended opinion
2 and order. Thank you very much.

3 (The hearing concluded at 4:10 p.m.)

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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
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7 I, CECELIA BROOKMAN, Certified Court Reporter
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